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ABSTRACT

A manual of U.S. immigration law and regulations pertaining to foreign students and scholars is presented to assist foreign student advisers. Overall topics include nonimmigrant status, student (F) status, exchange visitor (J) status, temporary worker or trainee (H) status, other nonimmigrant classes, and immigrant status. Specific areas include: passports, visas, arrival-departure record (Form I-94), alien registration and address report, extension of temporary stay, change of nonimmigrant classification, voluntary departure, departure, issuance of form I-20 to F-1 students, elimination of duration of status, maintenance of status, employment, visits abroad and reentry, change of status, departure or termination of status, spouse/dependent (F-2) status, issuance of Form IAP-66 for exchange visitors, two-year home country residence requirement, special factors governing participants in medical fields, exchange visitor dependents (J-2), H-1 and H-2 temporary worker status, H-3 trainee status, H-4 dependent status, nonimmigrant classification less commonly encountered in educational institutions (e.g., diplomats, visitors for business or pleasure), change of nonimmigrant classification, the Immigration and Nationality Act as Amended, the selection system (qualitative standards, numerical limitations, the preference system, ineligibility for immigrant status, and procedures for establishing qualifications for immigrant status), labor certification, appeals and reconsideration, deportation, and refugees and asylum. Appended materials include a fee schedule, sample forms, a map of immigration and naturalization service regional and district areas, a list of visa issuing posts, and a bibliography. (SW)

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Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars

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National Association for Foreign Student Affairs, 1982

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To those people serving on the revision team, NAFSA is especially grateful. Not only did they prepare working drafts of various chapters of the *Manual*, but they also contributed heavily of their own time and expertise to the total publication.

Members of the team were Heather Olson, *chairman*, Gary Althen, Marvin Baron, Margaret Kidd, Kenneth Rogers, Eugene Smith, and Jennifer Stephens. Elaine Mannen served as staff consultant and devoted many hours to the project.

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INTRODUCTION

A manual of U.S. immigration law and regulations pertaining to foreign students and scholars was first published by the National Association for Foreign Student Affairs (NAFSA) in 1966, following the issuance of a number of related publications by various NAFSA members. In that year Robert B. Klinger (University of Michigan), in collaboration with Furman A. Bridgers (University of Maryland) and Robert B. Lindsey (Immigration and Naturalization Service), authored the first comprehensive NAFSA publication. Mr. Bridgers revised the manual in 1969 and again in 1972. The manual was rewritten in 1975 by the Government Regulations Advisory Committee, chaired by Alex Bedrosian (New Jersey Institute of Technology). This 1981 edition carries on the NAFSA tradition of attempting to keep the membership aware of changes in government regulations affecting foreign students and scholars.

These manuals have been indispensable references for all those concerned with international educational interchange, particularly in an era of ever-changing regulations. Through these publications, advisers to foreign students and scholars have become familiar with many aspects of immigration law and procedures and have been aided in performing their duties more effectively.

Contents and Style

Considerable attention has been given to the manner in which the material in the *Manual* has been organized. Specific major topics are presented as entities in themselves. For example, the section on the student (F) status contains most of the essential information on that topic. Thus advisers dealing primarily with F-1 students generally need only refer to that section for needed information. Advisers are encouraged to become familiar with the entire contents of the *Manual*, however, to ensure awareness of all possible contingencies.

While the primary emphasis of the *Manual*, as in earlier editions, is on nonimmigrant visa classifications and status, information on immigrant visa classifications and status as well as other special topics is included.

Where the precise wording of a law or regulation is required, the Immigration and Nationality Act (Act) or Code of Federal Regulations (CFR) is quoted verbatim. In all cases where information comes from the Act or the CFR, the appropriate section is cited, e.g., [8 CFR 214.2(f)(5)].

The bibliography lists references which the authors have drawn upon heavily and which advisers may wish to have available for their own use.

As indicated above, an attempt has been made to incorporate most of the essential information about a specific immigration classification into the section of the *Manual* dealing with that classification. That has caused numerous repetitions of some of the material and references, but the authors felt it better to repeat the material than to require the reader to cope with too many cross-references.

Readers will note some slight differences in style and approach among the different sections of the *Manual*. Although the *Manual* was a joint and coordinated project of all the authors, each individual was assigned principal responsibility for certain sections, and their differences in style may be apparent.

Limitations

The *Manual* makes frequent reference to the *Immigration and Nationality Act with Amendments and Notes on Related Laws* (Act), 7th edition, revised through September 1, 1980, and to the current editions of Title 8, "Aliens and Nationality," Title 22, "Foreign Relations," and Title 20, "Employees Benefits" of the CFR. It does not presume to be a substitute for those works. It is primarily a layman's digest of immigration law and regulations as they pertain to foreign students and scholars and a guide in the interpretation and use of that material. Individuals desiring a more comprehensive treatment of immigration law and regulations should refer to the above documents.

In interpreting the material in the *Manual*, foreign student advisers should be aware of their own limitations when working with complicated legal matters. An adviser should recognize the necessity of calling on a trained immigration attorney in such cases. Failure to do so may have long-range deleterious effects on the lives of the students and scholars whom they are, in fact, trying to help. On the other hand, counseling which can be provided by advisers on the basis of information provided in the *Manual* may often save the student or scholar money and obviate needless correspondence, hearings, and appeals.

Laws and regulations are subject to interpretation of those who are responsible for their administration. Immigration law grants considerable discretionary authority to the INS, and thus to the INS District Offices. Because of such possible variations in local practice, it is impossible to provide detailed specific information and guidelines to meet every contingency. The authors, therefore, have attempted to provide objective basic background material which will assist foreign student advisers in responding effectively to local variations in practice.

Updating the Material

Immigration regulations, forms, and procedures change frequently. To preclude the invalidation of portions of the *Manual* by such changes, it has been designed for loose leaf binders so that appropriate revisions may be substituted for existing material as regulations change. It is the Association's intent to report such changes through its *Newsletter* and with periodic supplements to the *Manual*, which will be mailed to those who receive the *Manual*. Advisers desiring a daily record of proposed changes in the regulations should subscribe to the *Federal Register*. Relevant material published in the *Federal Register* appears shortly thereafter in a condensed version in *Interpreter Releases*. Subscriptions to this publication are available from the American Council for Nationalities Service, 20 West 40th Street, New York, New York 10018.

SECTION 1

INTRODUCTION TO IMMIGRATION LAW

Immigration laws in the U.S., as elsewhere, are designed to control the number and kinds of people who are permitted to enter the country for purposes of permanent or temporary residence. All countries have immigration laws; their restrictiveness or permissiveness depends upon the country's policy toward attracting more people or limiting population growth. In the late twentieth century, most countries are more interested in limiting population growth than in attracting more residents or workers; thus the immigration laws of most countries tend to be restrictive.

This is certainly true of the U.S., but it was not always so. Throughout its early history, this country welcomed immigrants of all kinds and from all countries. Until the late nineteenth century, all that was needed to come to the U.S. for permanent or temporary residence was a steamship ticket. Beginning in the 1880s, progressively restrictive policies were adopted to exclude certain types of persons (the Chinese Exclusion Acts) and later to limit the total number of persons who could come here for permanent residence and to control the national and ethnic composition of immigrants (the national origins quota system).

Until 1965, the U.S. immigration laws contained a number of discriminatory provisions favoring immigration from Northern and Western Europe, discouraging immigration from Southern and Eastern Europe, and excluding all but a very small number of people of Asian origin. The national origins quota system was abolished in 1965, and most of the discriminatory provisions of the law were eliminated at that time.

At present, the flow of aliens into the U.S. for permanent or temporary residence is regulated and controlled by the Immigration and Nationality Act (Act), as amended. It provides for the annual admission of a controlled and limited number of immigrants to come to this country to reside permanently and for the admission of an unlimited number of nonimmigrants to come temporarily to the country for specific purposes and within specific limitations of those purposes as defined in the law.

The Act is administered and enforced in the U.S. by the Immigration and Naturalization Service (INS), an agency of the Department of Justice. It is administered outside the U.S. by the Department of State through its consular posts around the world. Within the U.S., the Department of Labor is also substantially involved in administering the law because of the requirement of the Act that many immigrants and some nonimmigrants who enter the U.S. must obtain "labor certifications" to ensure that they will not deprive U.S. citizens or permanent residents of needed employment opportunities and that their employment will not depress the wages or adversely affect the working conditions of U.S. citizens. The International Communication Agency (ICA) is also involved in the administration of the law through its control of Exchange Visitor programs.

Although the Act provides the basis for controlling the flow of aliens to the U.S., the daily operations of the government departments involved in administering the law are prescribed in regulations promulgated by these departments and incorporated into the Code of Federal Regulations (CFR). All such regulations must be consistent with the Act and the Constitution. They have the force of law and are enforced by the courts. The regulations of the INS are published in Title 8 of the Code of Federal Regulations, "Aliens and Nationality" (8 CFR); those of the Department of State and ICA are published in Title 22, "Foreign Relations" (22 CFR); those of the Department of Labor in Title 29, "Labor" (29 CFR), and Title 20, "Employees Benefits" (20 CFR).

Proposed amendments to the Code of Federal Regulations are published in the *Federal Register*. Normally, the public is allowed a period of 60 days from the date of publication to submit views and recommendations regarding such proposed changes to the appropriate government department. The final revisions of the regulations, if any, are then published in the *Federal Register* and are effective from the date of publication or other date indicated in the regulation. Each Title of the Code of Federal Regulations is revised and repub-

lished once a year to incorporate all changes in regulations as they have appeared in the *Federal Register*.

Officials of the INS are also guided by INS Operations Instructions, called "OIs." Some of these OIs are available from the Government Printing Office by subscription (see Bibliography, Appendix 10) and are accessible to the public in INS reading rooms, but others are confidential internal documents. The OIs elaborate upon the regulations and provide detailed instructions and procedures to INS officers in carrying out their assigned duties. Similar kinds of instructions are provided by the Visa Office, Bureau of Consular Affairs, Department of State, to consular officers outside the U.S. in the *Foreign Affairs Manual* and other periodic communications.

The law and the regulations provide for a very definite distinction between immigrants and nonimmigrants, and for equally definite distinctions among the various nonimmigrant classes. The law presumes that each applicant for a U.S. visa or for entry to the U.S. is considered to be an intending immigrant unless the applicant can establish that he is a *bona fide* nonimmigrant and fits into one of the nonimmigrant classifications defined in the law and regulations. The burden of proof that he is a *bona fide* nonimmigrant rests with the alien applicant. An applicant for a visitor, student, Exchange Visitor, temporary worker, or trainee visa (the categories of greatest concern to foreign student advisers) must demonstrate that he has a residence in a foreign country which he has no intention of abandoning and that he is coming to the U.S. temporarily for the specific purpose of carrying out the activity described in the law. Nonimmigrant classes are enumerated and described in Sections 2 through 6 of the *Manual*.

Because of severe population pressures in many parts of the world and the economic incentive of coming to the U.S. to find employment, our immigration laws and the agencies charged with their administration are under severe strain in the 1980s. Congress has not funded INS adequately to carry out its enforcement responsibilities, and INS has failed to modernize its record-keeping and enforcement systems. It is impossible for INS to patrol land border areas and ports of entry adequately to prevent the entry of large numbers of undocumented aliens. It is extremely difficult in a free society to monitor the hundreds of thousands of aliens who enter the country legally as nonimmigrants and to enforce their departure at the end of their authorized periods of stay. As a result, some 4 million to 8 million aliens (depending upon whose estimates one uses) are in the U.S. illegally, either by entering without proper documents or by overstaying or otherwise violating the terms of their originally legal entries as nonimmigrants.

The Select Commission on Immigration and Refugee Policy, created by Congress in 1978, recommended substantial changes in the immigration law when it presented its final report to Congress in 1981. Among those proposed changes were a partial amnesty and legalization of status for many aliens illegally in the U.S., civil and criminal penalties against those who knowingly employ illegal aliens, a slight increase in the total number of aliens allowed to come to the U.S. as permanent residents, tighter control of border areas and ports of entry to reduce the flow of illegal aliens, closer monitoring of and improved records on nonimmigrant aliens, and improved training for INS officers. It remains to be seen how Congress will react to these and other recommendations of the Select Commission.

Because of the focusing of national attention on the problem of undocumented aliens, and because some of these aliens originally arrived here as legal nonimmigrants, INS appears to be attempting to tighten its enforcement of the law as it applies to nonimmigrants. The inadequacies of the INS system became apparent in late 1979 when the Service was unable to determine the number, location, and identity of foreign students, and specifically students from Iran, that were in the U.S. At that time, INS adopted a harder line against students and other nonimmigrants in an attempt to maintain greater control over nonimmigrants. Unfortunately, innocent and law-abiding nonimmigrants are the ones who frequently pay the price for the need for tighter enforcement of the immigration laws. Some students and scholars are having increased difficulty in getting into the U.S., and after being admitted they sometimes suffer severe penalties for relatively minor and innocent violations of their status after arrival. Advisers must be aware of current enforcement policies, view individual incidents in the context of the national problem of immigration enforcement, and make special efforts to inform students and scholars about all requirements for maintaining status in order to minimize the problems faced by these well-intentioned visitors to our institutions.

It is very important for the foreign student adviser to define carefully for himself and for the aliens with whom he works the area of his responsibility and authority and to stay within these defined limitations. It is clearly the responsibility of the foreign student adviser to ensure that the aliens with whom he works are fully and properly informed and instructed regarding their privileges and responsibilities and regarding the limitations placed on their activities by U.S. laws and regulations. It is also clearly the responsibility of the foreign student adviser to perform in a thorough and professional manner the specific duties assigned to him by the laws and regulations for the particular classes of aliens for whom he has responsibility.

It is just as clearly *not* the responsibility of the foreign student adviser to *enforce* the laws and regulations or to make reports to government agencies which go beyond the reporting requirements specified for each class of nonimmigrant. To do so would be to exceed his authority and responsibility, confuse the adminis-

tration of the law, and, most important, destroy his working relationship with the aliens with whom he works, thus making him ineffective in his assigned and proper duties. The foreign student adviser must be thorough and professional in carrying out his responsibilities, but he must confine his activities to the area of his authority and responsibility if he is to serve the best interests of the foreign students and scholars he advises and the effective and efficient administration of the laws.

It is hoped that this manual will assist foreign student advisers in properly defining their areas of authority and responsibility and in carrying out their duties in a professional manner.

SECTION 2

NONIMMIGRANT STATUS

2.1 Nonimmigrant Classes

A nonimmigrant is any alien whose reason for coming to the U.S. involves a temporary stay that will end when its purpose has been accomplished.

Nonimmigrant visas are issued in accordance with provisions of Section 101(a)(15) of the Immigration and Nationality Act (Act), as amended. Most students receive F-1 visas and enter the U.S. in F-1 status. Some are in J-1 status. Foreign scholars (professors, researchers) are usually in J-1 or H-1 status.

The *Manual* contains sections on each of the nonimmigrant classifications most frequently encountered by personnel working in the field of international educational exchange, viz., F students (Section 3), J Exchange Visitors (Section 4), and H temporary workers or trainees (Section 5). Section 6 gives brief information about other nonimmigrant classes.

The Act, as amended, designates the 37 nonimmigrant classes listed below (see Committee print of the Immigration and Nationality Act, 7th edition, pp. 212–213). The different classes of nonimmigrants are known by the sub-letter of the immigration law concerning their class. For example, Sec. 101(a)(15)(F)(i) of the Act, as amended, is the full reference for what is commonly called the F-1 student.

NONIMMIGRANTS

Visa Symbol	Class	Section of Law
A-1	Ambassador, public minister, career diplomat or consular officer, and members of immediate family	101(a)(15)(A)(i)
A-2	Other foreign government official or employee, and members of immediate family	101(a)(15)(A)(ii)
A-3	Attendant, servant, or personal employee of alien classified A-1 or A-2, and members of immediate family	101(a)(15)(A)(iii)
B-1	Temporary visitor for business	101(a)(15)(B)
B-2	Temporary visitor for pleasure	101(a)(15)(B)
C-1	Alien in transit	101(a)(15)(C)
C-2	Alien in transit to United Nations Headquarters District under Section 11(3), (4), or (5) of Headquarters Agreement	101(a)(15)(C)
C-3	Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit	212(d)(8)
D	Crewman (seaman or airman)	101(a)(15)(D)
E-1	Treaty trader, spouse, and children	101(a)(15)(E)(i)
E-2	Treaty investor, spouse, and children	101(a)(15)(E)(ii)
F-1	Student	101(a)(15)(F)(i)
F-2	Spouse or child of student	101(a)(15)(F)(ii)
G-1	Principal resident representative of recognized foreign member government to international organization, his staff, and members of immediate family	101(a)(15)(G)(i)

G-2	Other representative of recognized foreign member government to international organization, and members of immediate family	101(a)(15)(G)(ii)
G-3	Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family	101(a)(15)(G)(iii)
G-4	International organization officer or employee, and members of immediate family	101(a)(15)(G)(iv)
G-5	Attendant, servant, or personal employee of alien classified G-1, G-2, G-3, or G-4, and members of immediate family	101(a)(15)(G)(v)
H-1	Temporary worker of distinguished merit and ability	101(a)(15)(H)(i)
H-2	Temporary worker performing services unavailable in the U.S.	101(a)(15)(H)(ii)
H-3	Trainee	101(a)(15)(H)(iii)
H-4	Spouse or child of alien classified H-1, H-2, or H-3	101(a)(15)(H)
I	Representative of foreign information media, spouse, and children	101(a)(15)(I)
J-1	Exchange visitor	101(a)(15)(J)
J-2	Spouse or child of exchange visitor	101(a)(15)(J)
K-1	Fiancee or fiance of U.S. citizen	101(a)(15)(K)
K-2	Child of fiancee or fiance of U.S. citizen	101(a)(15)(K)
L-1	Intracompany transferee	101(a)(15)(L)
L-2	Spouse or child of alien classified L-1	101(a)(15)(L)
NATO-1	Principal permanent representative of member state to NATO (including any of its subsidiary bodies) resident in the U.S. and resident members of his official staff; Secretary General, Deputy Secretary General, Assistant Secretaries General, and Executive Secretary of NATO; other permanent NATO officials of similar rank; and members of immediate family	Art. 12, 5 U.S.T. 1094; Art. 20, 5 U.S.T. 1098
NATO-2	Other representatives of member states to NATO (including any of its subsidiary bodies) including representatives, advisers, and technical experts of delegations, and members of immediate family; dependents of member of a force entering in accordance with provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the "Protocol on the Status of International Military Headquarters"; members of such a force if issued visas	Art. 13, 5 U.S.T. 1094; Art. 1, 4 U.S.T. 1794; Art. 3, 4 U.S.T. 1796
NATO-3	Official clerical staff accompanying a representative of member state of NATO (including any of its subsidiary bodies) and members of immediate family	Art. 14, 5 U.S.T. 1096
NATO-4	Officials of NATO (other than those classifiable under NATO-1) and members of immediate family	Art. 18, 5 U.S.T. 1098
NATO-5	Experts, other than NATO officials classifiable under the symbol NATO-4, employed on missions on behalf of NATO; and their dependents	Art. 21, 5 U.S.T. 1100
NATO-6	Members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement; members of a civilian component attached to or employed by an Allied Headquarters under the "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty; and their dependents	Art. 1, 4 U.S.T. 1974; Art. 3, 5 U.S.T. 877
NATO-7	Attendant, servant, or personal employee of alien classified as NATO-1, NATO-2, NATO-3, NATO-4,	Art. 12-20, 5 U.S.T. 1094-98

NATO-5, or NATO-6, and members of immediate family

(Appendix B, Committee Print INA)

2.2 **Passports**

2.2.1. ***Definition.*** A passport is defined in the Act as any travel document issued by competent authority showing the bearer's origin, identity, and nationality, if any, which is valid for entry of the bearer into a foreign country. [Act 101(a)(30)] In this context, a passport may encompass documents other than those traditionally thought of as a "passport," and may, in fact, be a set of documents such as a certificate of identity and a reentry permit for the country issuing the documents. A passport permits its bearer to return to the issuing country, *usually* the country of the bearer's nationality.

2.2.2. ***Travel documents in lieu of passport.*** Some foreign people will have travel documents other than passports. The most common is a Certificate of Identity (CI), sometimes held by Hong Kong students who were born in mainland China. The bearer of a CI is usually a person who is not a *citizen* of the foreign state issuing the CI, but is a *resident* of that state who, for some reason, cannot or will not obtain a travel document from the foreign state of his original citizenship.

Individuals who are refugees may hold refugee travel documents issued by countries signatory to the United Nations Convention Relating to the Status of Refugees.

In this *Manual*, the term "passport" encompasses travel documents which are used in lieu of passports.

2.2.3. ***Validity of a passport.*** A passport shows the date of its issuance and the date to which it is valid (its expiration date). The period of validity of a passport varies according to the regulations and procedures of the issuing country, and may range from one to several years.

2.2.4. ***Passport requirements for nonimmigrants.*** With certain exceptions, any alien applying for a U.S. visa or seeking admission at a U.S. port of entry must have a passport. The most common exceptions encountered in educational institutions are Canadian nationals and landed immigrants having a common nationality with Canadian nationals who are entering the U.S. from within the Western Hemisphere [8 CFR 212.1(a)], and natives and residents of the Trust Territory of the Pacific Islands who have proceeded in direct and continuous transit from the Trust Territory to the United States. [8 CFR 212.1(d)]

Other exceptions to the passport requirement are described in 8 CFR 212.1.

The passports of all nonimmigrants must be kept valid for a minimum period of six months into the future. Some countries have entered into agreements with the U.S. Government acknowledging that a passport is valid for six months beyond the expiration date shown in the passport itself. Bearers of passports from these countries may remain in the U.S. up to the expiration date shown in the passport, as long as no other INS regulations would prohibit such a stay. Countries which have passport validity agreements with the U.S. are the following:

Algeria
Australia
Austria [Reisepass only]
Bahamas, The
Bangladesh
(travel permit and passport)
Belgium
Bolivia
Brazil
Cambodia
Canada
Chile
Colombia
Costa Rica
Cuba
Cyprus
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Ethiopia
Finland
France
Germany (F.R.G.)
(Reisepass and
Kinderausweis)
Greece
Guatemala
Guinea
Guyana
Honduras
Iceland
India
Iran
Ireland
Israel
Italy
Ivory Coast
Jamaica
Japan
Korea
Laos
Lebanon
Libya
Liechtenstein
Luxembourg
Madagascar
Mauritius
Mexico
Monaco
Morocco
Netherlands
New Zealand
Nicaragua (diplomatic and
official passports only)
Nigeria
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Portugal
Qatar
Senegal
Soviet Union (U.S.S.R.)
(seamen only)
Spain
Sri Lanka (Ceylon)
Sudan
Sweden
Switzerland
Syria
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
United Kingdom
Uruguay
Venezuela
Yugoslavia

[Public Notice 766 published 46 F.R. 39718, August 4, 1981]

2.2.5. ***Revalidation of a passport.*** Foreign passports may be revalidated in the U.S. by the designated representatives of foreign governments, usually officials of the consular section of the government's embassy in Washington, D.C., or officials of the consulates located in various U.S. cities. A foreign student or scholar who needs to revalidate his passport should consult his embassy or consulate to determine what procedures

are required to secure validation. Among other things, he may need a letter from an official of his educational institution certifying his status.

2.3 Visas

2.3.1. ***Definition.*** A visa to enter the U.S. as a nonimmigrant is a stamped entry on a page of the passport. It enables the passport's bearer to request the immigration officer at the port of entry to grant him admission to the U.S. under conditions specified for the type of visa the bearer holds.

The nonimmigrant visa stamp, as can be seen in the sample reproduced in Appendix 4, contains the following information: the number of the visa; the title and location of the issuing office; the classification of the visa; the date of issuance; the expiration date or the word "indefinitely" if, on the basis of reciprocity with the bearer's home government, a visa with indefinite validity is issued; the number of applications for admission to the U.S. for which it is valid, or the word "multiple" in cases where an indefinite number of applications for admission are allowed during the visa's period of validity; the name of the bearer or the notation "Bearer" or "Bearer and Dependents named in Passport"; the word "gratis" if there was no fee for the visa; and the signature and title of the issuing officer. [22 CFR 41.124(c)]

There is very often confusion between the term "visa," which gives a person permission to apply for entry to the U.S., and the terms "Arrival-Departure Record," "I-94," or "permission to stay." The latter terms refer to a person's *permission to remain in the U.S.* after having entered (see Section 2.4). A person's *visa* need not remain valid once he has used it to gain admission to the U.S. His *permission to stay*, by contrast, must be kept valid.

Confusion also surrounds the terms "visa" and "status." The "visa" is stamped in the alien's passport and is used for entering the U.S.; the alien is said to be in a particular immigration "status" once in the U.S. But the type of visa stamped in the passport may not be the same as the status in which the alien is in the U.S. An alien may enter the country with one type of visa (e.g., B-2 visitor) and subsequently have his "status" changed to another one, such as F-1 student. This change will be noted on the Form I-94 of the alien, who will then be in "F-1 status" even though the visa stamped in his passport is a B-2 visa. He will have one type of visa and a different type of status.

2.3.2. ***Visa requirements for nonimmigrants.*** With certain exceptions, all aliens applying for admission to the U.S. must hold valid visas. The exceptions to this requirement are generally the same as the exceptions to the passport requirement. Note, however, that a Canadian national who is entering the U.S. from outside the Western Hemisphere must have a passport, but not a visa. (See Section 2.2.4 and 8 CFR 212.1.)

2.3.3. ***Requirements for obtaining a visa.*** Application for a nonimmigrant visa usually requires a personal appearance before the consular officer assigned to the applicant's consular district, completion of Form OF156 (Application for Nonimmigrant Visa and Alien Registration), and the provision of such other documents as the consular officer may require in order to be satisfied that the applicant is eligible for the nonimmigrant visa for which he is applying. These other documents will include the appropriate Certificate of Eligibility (Form I-20 or IAP-66) for student or Exchange Visitor applicants, an approved petition for temporary worker or trainee applicants, or other documents for applicants for other types of visas. The required documents might also include evidence of adequate financial resources, evidence of competence in the English language, evidence of educational attainments, photographs, police certificates, and evidence of a medical examination. [22 CFR 41.110-41.117]

2.3.4. ***Function of consul in issuing nonimmigrant visas.*** "An applicant for a nonimmigrant visa shall be presumed to be an immigrant until he establishes *to the satisfaction of the consular officer* that he is entitled to a particular nonimmigrant status. . . .The burden of proof is upon the applicant to establish that he is entitled to the nonimmigrant classification and type of nonimmigrant visa for which he is an applicant." [22 CFR 41.10] (Emphasis added.)

In accordance with this and with the preceding paragraph, the consul *has discretion* to require whatever evidence he thinks is necessary to demonstrate that an applicant for a nonimmigrant visa is eligible for such a visa. Consuls operate under guidelines furnished by the Visa Office of the Department of State, but they retain discretionary authority concerning most requirements they may make of applicants for nonimmigrant visas.

If a consul has reason to assume that a visa applicant is not a *bona fide* nonimmigrant, he may deny that person a visa. The most common reason for denying a visa is that the person cannot convince the consular officer that he has a residence in a foreign country which he has no intention of abandoning. In this case a person may attempt to convince the consul that he has both need and reason to return to his foreign residence. This may be done in a variety of ways, such as showing evidence of a job offer or a job to which he can return, ownership of property, or delineation of family ties and responsibilities.

School officials who become aware of specific situations in which they believe a consul is making unreasonable requirements of a specific visa applicant can contact the consul and request reconsideration of the application. A school official also can furnish details of the situation to the Visa Office and request that office to ensure that the consul is following established guidelines. While the Visa Office has no formal authority to override the decision of a consular officer who is legit-

imately exercising his discretion, a Visa Office inquiry to a consular officer can have some influence on his decision. There is no formal appeal from a consul's denial of a visa application.

2.4 Arrival-Departure Record (Form I-94)

2.4.1. ***General.*** Every alien entering the U.S. temporarily (with a few exceptions, such as tourists from Canada and, under certain circumstances, Mexican nationals who hold U.S. border crossing cards) is issued a white, 3" × 5" paper that is called an Arrival-Departure Record, or Form I-94. A sample Form I-94 is reproduced in Appendix 3. It is usually stapled into the alien's passport on the same page as the one on which the visa has been stamped.

The Form I-94 records actions of the INS with respect to the alien's immigration status. The Form I-94 provides information the foreign student adviser needs to advise the student about his status. It shows his immigration classification and endorsements made by immigration officers to indicate the place and date of the alien's admission to the U.S.; the initial period of stay authorized; any extensions of stay authorized; any change of nonimmigrant classification; and, in the case of an F-1 student, the name of the school to which the student is destined, any authorized transfer of school, any authorization for off-campus employment or for practical training.

2.4.2. ***Replacement of lost Form I-94.*** To replace a Form I-94 which has been lost or mutilated, an alien applies to INS on Form I-102 (see Fee Schedule, Appendix 1). If a photocopy of the lost Form I-94 can be submitted with Form I-102, processing time may be greatly reduced and the INS office involved may not charge for the replacement. An adviser may wish to retain a photocopy of Form I-94 in each student's file, or advise students to retain a copy.

2.5 Alien Registration and Address Report

2.5.1. ***Registration.*** All aliens admitted to the U.S. must be registered for immigration purposes. Initial registration is effected when the alien applicant applies for a visa. [Act 221(a) and (b), 261, 262, 264]

Form I-94, the Arrival-Departure Record, serves as the registration form for aliens admitted as nonimmigrants. [8 CFR 264.1 (a)]

Until 1970, the U.S. government assigned an "alien registration number" to all immigrants and to nonimmigrants admitted to the U.S. as F-1 students and J-1 Exchange Visitors. The alien registration number begins with the letter "A" followed by eight digits. Since 1970, an alien registration number is routinely assigned only to immigrants and to those nonimmigrants having classification as J-1 Exchange Visitors and K fiances or fiancees. Alien registration numbers may also be assigned in cases involving nonroutine applications, nonimmigrants under proceedings, and other unusual circumstances. Thus, many foreign students now in the U.S. do not have an alien registration number.

Form I-551, the Alien Registration Receipt Card, is the registration form for aliens admitted as immigrants or who become immigrants through adjustment of status. It is a rectangular laminated card, 2 1/8" × 3 3/8" in size, green, blue, and salmon color, showing the alien's photograph and registration date. [8 CFR 101.3] (See Section 7.10.1.)

2.5.2. ***Address reports.*** All immigrant and nonimmigrant aliens living in the U.S. as of January 1 of each year, except those in A and G classes [Act 263(b)] are required to report their addresses to INS on Form I-53 on or before January 31. Form I-53 is available at any U.S. post office or INS office. As a convenience for students, foreign student advisers may request a supply of Forms I-53 from their local INS office each January. Instructions for the completion and submission of the form are printed thereon. Failure to complete the required address reports subjects an alien to possible fine, imprisonment, or deportation. [Act 265, 266]

There are two other address report requirements. Both involve Form AR-11, which is designed for the purposes of notifying the INS of a change of address and notifying the INS each three months of the address of an alien temporarily here. [Act 265; 8 CFR 265]

2.6 Extension of Temporary Stay

Upon their initial admission to the U.S., most nonimmigrants receive permission to stay in the country for a specific period of time. Should a nonimmigrant wish to remain in the U.S. beyond that period, he must, if he is eligible to do so, apply for an extension of his permission to stay. The procedure for applying for an extension of stay varies according to nonimmigrant classification. For further discussion of those procedures refer to the *Manual* sections dealing with specific classifications.

Certain nonimmigrants, mainly those in A and G status (except A-3 and G-5), do not have specific limitations on their period of stay in the U.S. Their Forms I-94 are marked "D/S," which means "duration of status." With such an entry on his Form I-94, an alien can remain in the U.S. as long as he is engaged in the activity for which he was admitted.

2.7 Change of Nonimmigrant Classification

In some cases, it is possible to change from one nonimmigrant classification to another. For details, see Sections 3.13 (concerning F status), 4.10 (concerning J status), and 6.4 (concerning other nonimmigrant statuses).

2.8 Voluntary Departure

Voluntary departure is the permission granted at the discretion of the INS for an alien to depart voluntarily

from the United States at his own expense in lieu of deportation. [Act 242(b); 8 CFR 242.5] It is a means by which a person may avoid the negative consequences of deportation by leaving the U.S. voluntarily prior to the deadline set by INS. If voluntary departure has been granted, the alien's Form I-94 will be endorsed "Voluntary Departure" or "V/D," with the date by which the departure is supposed to take place. The Form I-94 might also be stamped "under docket control," referring to an INS procedure whereby an alien's status is monitored to ensure compliance with terms established by INS.

Voluntary departure is granted in various circumstances, including cases in which a nonimmigrant student who is found to have violated the terms of his status is permitted to remain in the U.S. to complete an academic term. It may also be granted to a person who is unable to return home because of serious political or natural upheavals, but is unable to maintain lawful nonimmigrant status. The voluntary departure may be extended indefinitely until the upheaval is over and the person can return home or adjust status.

2.9 Departure

Ordinarily, an alien notifies the INS of his departure from the U.S. by surrendering his Form I-94 Arrival-Departure Record at the point of departure. An alien who is under docket control is also provided with a postal card on which to notify the INS of his departure.

Departing aliens, with certain exceptions such as F-1 students who have earned no income while in the U.S., are formally required by the Internal Revenue Service to obtain a "Certificate of Compliance" or "Sailing Permit" before departure from the country. The sailing permit is evidence that the alien has paid whatever taxes may be due the U.S. government. Information about the requirements and procedures for obtaining a sailing permit can be found in Internal Revenue Service publication 518, "United States Tax Guide for Aliens," available in single copies free from the local IRS office.

SECTION 3

STUDENT (F) STATUS

3.1 Definition of F-1 Status

An F-1 visa and F-1 student status may be granted to an alien who is a *bona fide* student "qualified to pursue a full course of study" at an academic institution authorized to admit foreign students. When applying for an F-1 visa, the individual must prove to a U.S. consular official that he wishes to enter the U.S. temporarily and solely for purposes of study and that he has a permanent residence in a foreign country which he has no intention of abandoning. [Act 101(a)(15)(F)]

3.2 Responsibilities Assumed by an Approved School

Before a school may enroll nonimmigrant F students, it must secure approval from the Immigration and Naturalization Service (INS). A petition for approval is filed on Form I-17 (Petition for Approval of School for Attendance by Nonimmigrant Students), with the district director or officer-in-charge of the INS office having administrative jurisdiction over the place in which the school or school system is located. Before the INS official makes a decision on the school's petition for approval, he will consult the U.S. Department of Education as to whether the petitioner "is an established institution of learning or other recognized place of study, is operating a *bona fide* school, and has the necessary facilities, personnel, and finances to instruct in recognized courses," unless the petitioning school is in one of the categories already considered as meeting satisfactorily the above requirements. Those categories are as follows [8 CFR 214.3(c)]:

1. "A school (or school system) owned or operated as a public educational institution by the United States or a state or political subdivision thereof;
2. "A school listed in the current United States Department of Education publications, 'Accredited Postsecondary Institutions and Programs' or 'Education Directory, Colleges and Universities';
3. "A secondary school operated by or as a part of an institution listed in the publications mentioned above."

If a school is approved to accept nonimmigrant students, it agrees: [8 CFR 214.3; 214.4]

1. To furnish a properly executed Form I-20 to a nonimmigrant alien student who is accepted for attendance at the school;
2. After receiving notice, on Form I-20B, of arrival in the U.S. of a nonimmigrant alien student destined to the school, or of approval by INS of a student to attend the school, to submit immediately to the INS office having jurisdiction over the area in which the institution is located, reports in writing on Form I-20B, whenever such student:
   a. fails to register personally at the school within 60 days of the time he is expected to do so; or
   b. fails to carry a full course of study; or
   c. fails to attend classes to the extent normally required; or
   d. terminates his attendance at the institution;
3. To operate as a *bona fide* institution of learning;
4. To employ qualified professional personnel;
5. To maintain proper facilities for instruction; and
6. To limit any statement that may appear in any of the school's publications or advertisements concerning the approval of the school for attendance by nonimmigrant alien students to the following:

"This school is authorized under Federal law to enroll nonimmigrant alien students."

3.3 Issuance of Form I-20 to F-1 Students

A Form I-20 may be issued by an approved school to a foreign applicant accepted for enrollment in a full course of study (see Section 3.6.2) only after the school has determined that the applicant has met the following conditions: [8 CFR 214.4(a)]

3.3.1. ***Academic requirements.*** The academic institution should satisfy itself that the applicant has successfully completed a course of study equivalent to that normally required of an American applicant seeking admission to the school at the same level.

3.3.2. ***Language proficiency.*** The applicant should be adequately proficient in English to pursue his course of studies, or arrangements must be made to provide him with instruction in English.

Academic institutions may require the foreign applicant to take a standardized English proficiency test as a condition of admission. Such tests are administered at various centers in the U.S. and abroad. Proficiency in English need not be required if the institution in which he will enroll conducts its courses in a language in which the alien is proficient or has enrolled the applicant for a full course of English. In addition, if the school will provide a part-time course in English in order to improve the alien's command of the language, full proficiency need not be required.

3.3.3. ***Financial verification.*** The school is required to obtain verification from the applicant that he has financial resources which are adequate to provide for his expenses at the school without resorting to unauthorized employment. Funds may come from scholarships, fellowships, sponsoring agencies, the student's family, or any dependable source. The school should be satisfied that funds are guaranteed at least for the student's first year of study at the school and that, barring unforeseen circumstances, funding will also be available from the same or equally dependable source for subsequent years.

If the student is depending on funds from a source outside the U.S., the academic institution in which he plans to enroll is well advised to determine whether there are restrictions on the transfer of dollars from the country in which the funds are held. If such restrictions exist, the student should present evidence that they will not prevent his funds from being transferred.

3.3.4. ***Full course of study.*** In issuing Form I-20 to a foreign applicant, the authorized school official certifies that the applicant is admitted to the institution for the purpose of enrolling in a full course of study which will lead to the attainment of a specific educational, professional, or vocational objective. A school may not issue a Form I-20 to anyone who is not expected to be engaged in a full course of study as defined in Section 3.6.2. (See Section 3.11 for use of Form I-20 for post-doctoral students.)

3.4 Obtaining a Visa and Entering the U.S.

To enable an applicant to obtain an F-1 visa and/or enter the U.S. for the purpose of undertaking a full course of study, the authorized school official issues the student a properly executed Form I-20. It is advisable to keep a copy of the Form I-20 for the school's files.

The applicant must complete page 2 of the Form I-20, on which are listed a number of conditions a student accepts when he is granted F-1 status. The authorized school official, as well as the applicant, should be thoroughly familiar with these conditions. Page 5 of the Form I-20, which is a copy of page 2, is retained by the applicant and serves as a reminder of the obligations assumed under F-1 student status.

Although an applicant may meet, to the institution's satisfaction, all the conditions specified in assuming F-1 status, the U.S. consular official makes the ultimate decision as to whether the applicant will be granted an F-1 student visa (see Section 2.3.4).

3.4.1. ***Aliens subject to passport and visa requirements.*** An alien who is required to have a valid passport and visa for entry to the U.S. (see Section 2.2.4 and 2.3.2) applies for an F-1 visa at a U.S. consulate or embassy. In Taiwan, application is made at the American Institute. During a personal interview with the consular official, the applicant presents a valid passport and Form I-20, with page 2 of the form completed. Other documents, such as proof of English language proficiency and verification of financial support, may be requested by the consular official (see Section 2.3.3) to establish that the student meets all the requirements for nonimmigrant status. A U.S. consular official may require an applicant for an F-1 visa to post a bond to ensure that he will maintain his lawful nonimmigrant status and depart from the U.S. after completing his specific educational objective. [22 CFR 41.91(b)(2); 41.45(a)(4)] Such departure bonds are required infrequently.

If the visa application is approved, a visa stamp is placed on a page in the applicant's passport, noting the period of its validity and number of entries allowed (see Section 2.3.1). The Form I-20 is then returned to the applicant for his use in applying for admission to the U.S.

When the applicant arrives at the U.S. port of entry, he presents his passport, visa, and his copy of the Form I-20 to an immigration official. Upon admitting the student to the U.S., the immigration official issues him a Form I-94 (Arrival-Departure Record), which indicates the date and port of entry to the U.S., his classification, the name of the school he is authorized to attend, and the date to which the authorized stay is valid.

The student will be admitted to the U.S. for the specific period of time which is indicated on the Form I-20 as necessary for completion of his course of study (provided the student maintains his passport validity for a period of at least six months at all times while in the United States, unless exempt from the requirement for presentation of a passport.) The date to which his stay is valid is written on his Form I-94. The period of stay may be adjusted if the student transfers to a different course of study (see Section 3.8). He must maintain his status as an F-1 student (see Section 3.6).

The student's permission to remain in the U.S. is not valid after he completes the course of study for which he is currently registered at his current institution, even though his Form I-94 may carry a "D/S" designation or an expiration date that is in the future.

3.4.2. ***Aliens not subject to passport and visa requirements.*** Passport and visa requirements for entry to the U.S. do not pertain to certain aliens. The most important exceptions to the passport and visa requirements are Canadian citizens or landed immigrants of Canada

having a common nationality with Canadians who are entering the U.S. from the Western Hemisphere, and natives and residents of the Trust Territory of the Pacific Islands who have proceeded in direct and continuous transit from the Trust Territory to the United States (see Section 2.2.4). [8 CFR 212.1] An alien in one of these categories applies directly to an immigration inspector at the U.S. port of entry for admission as an F-1 student. The procedure is the same as that followed by aliens subject to passport and visa requirements except that the applicant need not present either a passport or a visa.

3.5 Elimination of Duration of Status

Until January 1, 1979, F-1 students were admitted to the U.S. for a period no longer than one year, and they were required to apply for annual extensions of stay as long as they remained in the U.S. as students. Beginning January 1, 1979, a nonimmigrant F-1 student was admitted to the U.S., or granted an extension of stay, for "duration of status" if his course of study was expected to require more than one year for completion. This was indicated as "D/S" on Form I-94. Effective March 30, 1981, the Code of Federal Regulations [8 CFR 214.2(f)(2)] was amended to eliminate duration of status for all F-1 students. F-1 students who had previously been given duration of status were converted to "date certain status" based upon the anticipated completion date of their studies as certified on the Form I-20 most recently issued to them by the school they were attending. Students were not required to report to INS to have their Forms I-94 changed from duration of status to reflect a specific date; rather, the specific date was to be noted on Form I-94 whenever the student came in contact with INS. Students returning to the U.S. after a temporary absence, or who apply for an INS benefit (e.g., permission to work, permission to transfer to another school), have a specific date recorded on Form I-94 at that time. After March 30, 1981, duration of status was no longer granted to any F-1 student.

3.6 Maintenance of Status

3.6.1. ***General requirements.*** Once an alien is admitted to the U.S. in F-1 status, he must meet certain obligations in order to maintain that status. He must continue to carry a full course of study (see Section 3.6.2) at the school he was authorized to attend. He must not accept employment off campus without prior INS approval (see Section 3.7), and he must keep his passport valid for at least six months into the future. (See Section 2.2.4.) He must apply for an extension of stay if he wishes to remain in the U.S. beyond the period of time for which he was admitted. A student whose Form I-94 is noted "duration of status" must consider his period of permission to remain in the U.S. to coincide with the expected date of completion of his current course of study, stated on Form I-20 (see Section 3.5).

If he wishes to transfer to another school, he must apply to INS for approval prior to making the transfer (see Section 3.9).

3.6.2. ***Full course of study.*** A full course of study is defined as follows: "(i) postgraduate study at a college or university, or undergraduate or postgraduate study at a religious seminary, certified by an authorized official of the institution as a full course of study; or (ii) undergraduate study at a college or university, certified by an authorized official of the institution to consist of at least 12 hours of instruction a week, or its equivalent; or (iii) study at a postsecondary vocational, business, or language school that confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning within category (1) or (2) of 8 CFR 214.3(c), and which has been certified by an authorized official of the institution to consist of at least 12 hours of instruction a week, or its equivalent; or (iv) study at any other vocational, business, or language school, certified by an authorized official of the institution to consist of at least 20 clock hours of attendance a week, if classroom instruction comprises the dominant part of the course of study; or at least 25 clock hours a week if shop or laboratory work comprises the dominant part of the course of study; or (v) study at a primary or secondary school, certified by an authorized official of the institution to consist of class attendance for not less than the minimum number of hours a week prescribed by such school for normal progress towards graduation. Also, to be deemed a full course of study, the authorized school official must certify that successful completion of the course of study will lead to the attainment of a stated educational, professional, or vocational objective. For purposes of this section, a college or university is an institution of higher learning which awards recognized associate, bachelor, master, doctoral, or professional degrees; schools which devote themselves exclusively or primarily to vocational, business, or language instruction are not included in the category of colleges or universities for such purposes." [8 CFR 214.2(f)(1a)]

3.6.3. ***Disclosure of information; criminal activity.*** F-1 students, like all other nonimmigrants, are required to disclose fully and truthfully all information requested by INS regardless of whether the information requested is material. Failure to do so constitutes a violation of status. [8 CFR 214.1(f)] They are also required, as a condition of their admission, to obey all laws which prohibit the commission of crimes of violence. Convic-

tion of a crime of violence for which a sentence of more than one year could be imposed, regardless of whether such a sentence is in fact imposed, constitutes a violation of status. [8 CFR 214.1(g)] While there is some question as to the Constitutional legitimacy of these conditions of maintaining status, they have not been tested in the courts and remain as part of the regulations.

3.7 Employment

Employment means the rendering of services on either a part-time or full-time basis for compensation, financial or otherwise. An F-1 student may accept employment or engage in business only under certain conditions and, in most cases, only after securing INS approval. F-1 students are permitted to work only under the following conditions: [8 CFR 214.2(f)(6)]

3.7.1. ***Off-campus employment.*** An F-1 student may accept off-campus employment only if INS has granted prior approval. In order for a student to qualify for permission to accept off-campus employment, the following conditions must be met: (1) the student must be in good standing and be carrying a full course of study; (2) the student must have demonstrated economic necessity due to unforeseen circumstances arising subsequent to entry or subsequent to change to student classification; (3) the student must have demonstrated that accepting employment will not interfere with his carrying a full program of study; and, (4) the student agrees employment will not exceed 20 hours per week while school is in session. The student applies to INS on Form I-538, which must be endorsed by the authorized school official (usually the foreign student adviser) certifying the listed conditions have been met. The Form I-538 and the student's Form I-94 must be submitted to INS for a decision on the application. If INS approves the work permit, the Form I-94 is endorsed to show approval; if INS denies the work permit, the Form I-94 is usually endorsed accordingly, although this is not required. The student does not have permission to engage in employment until he receives the Form I-94 endorsed by INS to show that permission.

An approved off-campus work permit authorizes a student to work up to a maximum of 20 hours per week while school is in session and full time during vacation periods when the school is not in session. The student may work during summer vacation only if he is registered for the following term or is eligible and intends to register for that term. Work permission expires when the Form I-94 expires, unless otherwise indicated on Form I-94, provided the student maintains status at the authorized school, or until the work permission is revoked by INS.

A significant change in the regulations, which became effective January 1, 1979, pertains to the procedures by which off-campus work permits are adjudicated. Prior to that time, INS determined the facts of the case—specifically, whether the student had experienced unforeseen change in financial circumstances—on the basis of the statements made in the application and supporting documents. The changed regulations provide that the authorized school official *certifies* the facts of the case by signing the Form I-538. This change places a greater responsibility on the school official to evaluate the facts of the case thoroughly and to sign the Form I-538 only when satisfied that all requirements have been met. It is the adviser's responsibility to obtain information regarding the economic necessity criterion.

Students from the Trust Territory of the Pacific Islands must apply to INS for off-campus work permission on Form I-538. Economic necessity due to unforeseen circumstances which arose subsequent to entry or to change to student status should be indicated; however, all such applications will be approved. [8 1214.2 (f)(3)]

An F-1 student granted permission to accept part-time off-campus employment must terminate that employment as soon as the unforeseen financial hardship ceases. Permission to accept off-campus employment, whether or not that employment is a part of an academic program, is automatically suspended if the Secretary of Labor certifies to the INS that a strike or other labor dispute involving a work stoppage is in progress at the student's place of employment. [8 CFR 214.2(f)(6)]

3.7.2. ***On-campus employment.*** An F-1 student may accept employment at the institution which he is authorized to attend without prior approval from INS. There is no limit on the number of hours a student may work on campus provided the employment does not interfere with the student's ability to maintain full-time enrollment during the academic year. On-campus employment which is undertaken pursuant to the terms of a scholarship, fellowship, or assistantship is considered to be part of the student's program of study. Such employment is authorized if the student is in good academic standing and is enrolled in a full course of study. Any on-campus employment other than that which is pursuant to a scholarship, fellowship, or assistantship is authorized only if it does not displace a U.S. citizen or permanent resident.

3.7.3. ***Practical training.*** An F-1 student may be eligible to accept or continue employment in order to obtain practical training upon graduation or completion of his studies. [8 CFR 214.2(f)(6a)] Permission to engage in practical training is not automatically granted, and care must be exercised in the preparation

of practical training applications. Permission to engage in practical training may be granted in increments of not more than six months.

3.7.3.1. *Limitations on training period.* An F-1 student graduating or completing his course of study at a U.S. college, university, or seminary is eligible for a maximum of 12 months of practical training, unless his period of schooling is shorter than 12 months. In cases where the period of schooling is less than 12 months, the period of practical training cannot be longer than the period of schooling, unless the school and the INS agree that a full 12 months of training is warranted.

F-1 students graduating from "a school which devotes itself exclusively or primarily to vocational, business, or language instruction" may apply for three months of practical training for each 12 months that have been spent in study.

If the training sought by a graduating F-1 student cannot be completed within the maximum training period for which he is eligible, permission for the training "may not be granted." A change to another nonimmigrant status is called for in these cases. That other nonimmigrant status may be H-1 (for people graduating with a degree that qualifies them to practice a profession), H-3 (for trainees at a lower or less specialized level of education), or J-1 (if the graduate's prospective employer is the sponsor of an Exchange Visitor Program whose activities encompass the proposed training. (See Section 2.7 concerning changes of nonimmigrant classification.)

When an applicant for practical training has previously participated in an "alternate work/study program" in which employment was required, his application for practical training is to be accompanied by a letter from the school stating how many hours the applicant worked off campus, what his duties were, and where he was employed. Time spent in off-campus employment that is required as part of a degree program will be subtracted from the amount of practical training time for which the applicant might otherwise be eligible.

When a student is granted practical training, his permission to stay in the U.S. is made valid until a specific date which is shown on the Form I-94. Permission to engage in practical training is usually granted for an initial period of six months (see the first two paragraphs of this section for exceptions), and may usually be extended for another six months (see Section 3.7.3.3).

3.7.3.2. *Qualifications.* An applicant for permission for practical training must have "completed his studies." This phrase is interpreted differently in different INS district offices, and may refer to (a) a student who has earned his final degree in the U.S.; (b) a Ph.D. student who has completed his courses but has some work remaining to be completed on his dissertation; (c) a student who has earned one degree in the U.S. and wishes to have a period of practical training before continuing toward a higher degree. Under certain circumstances a student who does not intend to complete a degree program may seek practical training before returning home.

The training an applicant seeks must be "related to (his) major field of study." In addition, the training sought must, in the opinion of an authorized official of the school the student is leaving, be unavailable in the applicant's own country.

3.7.3.3. *Application procedure.* Application for practical training permission is made on Form I-538. The student should complete parts I, II, and III of the form and the appropriate school official (usually the foreign student adviser) should complete part IV, certifying the student's status, that a period of practical training is recommended, and that, upon information and belief, such training is unavailable in the student's home country. The foreign student adviser may wish to consult with or obtain a letter from the student's academic adviser before signing the Form I-538 and may wish to submit a copy of that letter along with the application. When completed, the Form I-538 should be submitted to the INS office having jurisdiction over the area in which the school is located, together with the student's Form I-94 (and the Form [s] I-94 of his dependents, if any).

It is not necessary for the student to have a job offer at the time the application for the first six-month period of practical training is filed, as long as the school has recommended a period of practical training.

The application for the initial period of training should be filed "not more than 60 days before graduation or completion of a course or courses of study nor more than 30 days after graduation or completion of such study." The application may be filed earlier only if the applicant is attending a college, university, or seminary "which certified that practical training is required of all degree candidates in a specified professional field, and that the (applicant) is a candidate for a degree in that field."

If an application to begin practical training is approved, the training period begins on the date the student starts working or 60 days after completion of his course of study, whichever is earlier.

The application for the second period of practical training is submitted to the INS office having jurisdiction over the student's place of employment. This application includes a completed Form I-538 signed by the appropriate official of the school from which the student graduated; the student's Form I-94 (and those of his dependents, if any); "the recommendation of the school in sufficient detail to enable the Service to determine whether the position is related to the applicant's field of study"; and a letter from the applicant's employer "stating the occupation in which the applicant is employed and describing the duties he is performing." It is advisable to include the date employ-

ment began. The school may also indicate the recommended termination date for the second period of practical training, to help ensure that INS considers the beginning of the initial period of practical training to be as specified in the regulations—when the student began employment or 60 days after graduation or completion of the course of study, whichever was earlier.

An institution may issue a Form I-20 to an F-1 student who is on practical training and who wishes to travel outside the U.S. only after the training has been authorized by an INS office. The Form I-20 should show the date to which the training has been authorized. If a student has completed his studies and wishes to leave the U.S., he will not be able to obtain permission for practical training upon return to the U.S.; he must seek authorization for practical training prior to departure. Time spent abroad is charged against the student's maximum practical training time.

3.7.3.4. *Nonimmigrant graduates of U.S. medical schools.* An alien who graduates from a U.S. medical school is not eligible for a period of practical training in F-1 status for the purpose of internship, residency, or clinical training because he cannot complete that training within the one-year period that is the maximum allowed. Such a person would usually wish to enter the National Intern and Resident Matching Program (NIRMP) for placement in an internship or residency program. At that time he would apply for change of status to Exchange Visitor (J-1) status under the sponsorship of the Educational Commission for Foreign Medical Graduates on their Exchange-Visitor Program P-3-4510 (see Section 4.11.4) or to H-1 status (see Section 5.3).

3.7.4. ***Work required in a regularly prescribed curriculum.*** An F-1 student enrolled in an institution where work experience is a part of the regularly prescribed curriculum, sometimes called work/study or cooperative educational programs, may undertake such work without obtaining a change of status and without filing an application for permission to accept employment. Periods of actual employment are considered as practical training and should be counted as part of the maximum of 12 months that might be allowed for practical training after the student's graduation.

3.7.5. ***Social Security coverage.*** Contributions for Social Security should *not* be withheld from wages of nonimmigrant F-1 aliens if the employment is authorized. Further information can be found in the Social Security Administration publication "Social Security Coverage for Foreign Students and Exchange Visitors," which is available from any Social Security office (see Bibliography Appendix 12). This booklet should be shown by the student to any employer who may not be familiar with this exemption.

3.7.6. ***Income tax.*** Earnings from student employment, including income from assistantships, are usually subject to federal and state income taxes. Additional information on F-1 students' tax obligations may be found in Internal Revenue Service publications 518 "Foreign Scholars and Educational and Cultural Exchange Visitors" and 519 "U.S. Tax Guide for Aliens" (see Appendix 12).

3.8 Extension of Stay

An F-1 student must keep valid his permission to stay in the U.S. (Form I-94). If he was admitted to the U.S. for a specific period of time, or has subsequently been given a specific period of time, he must apply to INS for extension of his stay if he wishes to remain beyond that time. If he was admitted for duration of status, he lost that authorization effective March 30, 1981. See Section 3.5 for details concerning the elimination of that designation.

Application for extension of stay is made on Form I-538, which is completed by the student and endorsed by the authorized school official to certify the student is continuing a full course of study. If a student applying for an extension of stay is seeking a school transfer or intends to seek another degree at the same school, Form I-20 for the new course of study must accompany the application. The Form I-538, the student's Form I-94, and Form I-20, if applicable, must be sent to the INS office having jurisdiction over the school not less than 15 or more than 60 days before the student's authorized stay expires. The student should not send his passport to INS (the passport expiration date is indicated on the Form I-538). Form I-94, endorsed to show INS approval or denial of the application, is returned to the student. The extension of stay will be for the specific period of time necessary to complete the current course of study as shown on Form I-538 or Form I-20.

Extensions of stay for the F-2 dependents of a nonimmigrant student should be requested at the time the F-1 student applies for extension of stay (see Section 3.15.5).

While the application for extension of stay is pending, the F-1 student is considered to be legally in the U.S. if he has met and continues to meet all the requirements for maintaining his status.

Occasionally a foreign student will find it necessary to leave the U.S. before the Form I-94 has been returned to him. Since the Form I-94 is supposed to be surrendered at the port of exit, the foreign student adviser may want to issue a letter to the student certifying the student's academic status and explaining the absence of the Form I-94. The lack of a Form I-94 will not prevent the student's departure from the U.S. However, it may prevent his entry into Canada or Mexico (see Section 3.12.1).

3.9 Transfer of Schools

An F-1 student who transfers from one school to another in the U.S. must secure permission from INS

to transfer. Such permission should be sought before the student undertakes studies at the other school. [8 CFR 214.2(f)(4)]

An F-1 student applying for permission to transfer must first obtain Form I-20 from the school to which he wishes to transfer. He then completes parts I and III of Form I-538. The designated official at the school the student was last authorized to attend completes part IV of the Form I-538, after checking the student's record to determine whether he has been maintaining a full course of studies. The student then submits Form I-538, his Form I-94, and the Form I-20 from his new school to the district office of INS having jurisdiction over the school the student was last authorized to attend. (Some INS offices require evidence of financial support as part of an application for permission to transfer to another school.) The Form I-94 will be returned to the student, indicating whether the INS has approved the transfer.

Extension of stay will be granted until the specific date the Form I-20 from the new school shows as the expected completion date for the course of study.

A student must have been enrolled for a full course of study at his previous institution before seeking transfer approval, unless his failure to do so "was due to circumstances beyond his control or was otherwise justified." [8 CFR 214.2(f)(4)] The regulations do not specify the amount of time the F-1 student must have been enrolled in his former school. However, many INS district offices impose their own requirements as to the minimum time a student must have been enrolled at his previous school, often for at least one regular term. It is wise for the authorized school official to consult his INS district office for further information.

If the student's failure to attend his previous school was because of circumstances beyond his control or was otherwise justified, the student is well advised to provide full information to INS regarding these circumstances.

A special case arises when the student has INS permission to accept off-campus employment (see Section 3.7.1) and wishes to transfer schools. In these cases, if the student will apparently need to continue working while at the new school, the Form I-20 that the new school issues to the student should list income from off-campus employment among the sources of the student's income, and should include an estimated income from off-campus work. In this way, the INS knows that the student needs to continue working if the transfer of schools is approved. If the transfer is approved, the student then submits an application for permission to continue employment, and the INS may grant it, since it has already agreed that the student had encountered unforeseen economic circumstances and since it knows the student has transferred schools. The student considering this procedure should be aware that he runs some risk of having his application for permission to transfer schools denied and being required to depart from the U.S.

Occasionally the school official at the institution the student was last authorized to attend may refuse to complete part IV of the Form I-538. Such refusal is improper and has no basis in the immigration regulations. The school official's sole function in signing part IV of the Form I-538 for a student requesting transfer is to verify the student's enrollment. In situations where the authorized school official at the institution the student was previously authorized to attend refuses to sign the Form I-538, the student or the school official at the institution in which the student plans to enroll may wish to submit to INS a transcript or a sealed letter from the registrar's office at the student's previous school reflecting the student's academic background and showing his program of studies. Such documentation may, at the discretion of the INS office, serve in lieu of the school official's signature on part IV of Form I-538.

3.10 Reinstatement to Student Status

An F-1 student who has overstayed the authorized period of stay granted by the INS, or who has otherwise failed to maintain his F-1 student status (see Section 3.6), may be reinstated, at the discretion of the district director, to lawful F-1 student status only if the student:

1. is currently pursuing a full course of study at an approved school,
2. has not been employed without authorization, and
3. is not deportable on any ground other than failure to maintain status under Section 241(a)(2) or (9) of the Act, or 8 CFR 214.1(g). [8 CFR 214.2(f)(8)]

The student must establish that his failure to maintain status resulted from circumstances beyond his control or that failure to receive reinstatement to lawful status would result in considerable hardship to the student.

3.11 Post-doctoral Students

Students who have completed requirements for the doctorate and who wish to remain in the U.S. or come to the U.S. for advanced study and/or research at the post-doctoral level may be considered eligible for continuing in or securing F-1 status. The school in which such a student proposes to carry on his studies or research should certify on the Form I-20 that the applicant will be engaging in a full course of study and/or research as a post-doctoral student.

The post-doctoral program must be primarily for the educational advancement and benefit of the alien engaging in it and not for institutional staffing needs. Post-doctoral students engaged in full-time academic programs may be allowed to accept fellowships or assistantships that include duties consistent with the provisions for on-campus employment. [INS Operations Instruction 214.2(f)(1), p. 1132]

The use of F-1 status by aliens primarily engaged in post-doctoral research has not been widely publicized. Furthermore, there are few explicit guidelines regarding the number of extensions of stay such aliens may be granted or their eligibility to engage in practical training. If the common usage of U.S. academic institutions is applicable, "post-doctoral" status would refer to those students who have completed their doctoral degrees and who are extending their research skills and interests through intensive research/study in their field at a university or research institute approved for attendance by nonimmigrant students.

3.12 Visits Abroad and Reentry

Whenever an F-1 student wishes to leave the U.S. temporarily and return to continue his studies at the institution in which he is enrolled, he must secure the necessary documents to permit his entry to another country and his reentry to the U.S.

3.12.1. ***Entry into another country.*** An F-1 student who wishes to visit temporarily his country of citizenship or permanent residence will be allowed to enter that country if he holds a valid passport or other travel document issued by that country.

3.12.1.1. *Entry into Canada.* An F-1 student who wishes to visit Canada must have the following documents in his possession: (1) a valid passport; (2) a valid Form I-94; (3) evidence of return transportation arrangements; (4) sufficient funds for the contemplated stay in Canada; (5) a current Form I-20; and, (6) at certain border crossing stations, a letter from the foreign student adviser confirming the holder is engaged in studies at the institution. *In addition,* an F-1 student may need a Canadian tourist visa, depending on his country of nationality. Visitors from the following countries are not required to have Canadian tourist visas to enter Canada:

Andorra
Argentina
Australia
Austria
Bahamas
Bangladesh
Barbados
Belgium
Bolivia
Botswana
Brazil
Costa Rica
Cyprus
Denmark
Dominica
Dominican Republic
Fiji
Finland
France
Gambia
Germany, Federal Republic of
Greece
Grenada
Guatemala
Guyana
Honduras
Iceland
India
Ireland
Italy
Jamaica
Japan
Kenya
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Malaysia
Malta
Mauritius
Mexico
Monaco
Nauru
Netherlands
New Zealand
Nicaragua
Norway
Panama
Papua New Guinea
Paraguay
Peru
Portugal
San Marino
St. Lucia
St. Vincent
Seychelles Republic
Sierra Leone
Singapore
Solomon Islands
Spain
Sri Lanka
Surinam
Swaziland
Sweden
Switzerland
Tanzania
Tonga
Trinidad and Tobago
Turkey
Tuvalu
United States
Uruguay
Venezuela
Western Samoa
Zambia
Zimbabwe

In addition, visas are not required of tourists who are citizens of the United Kingdom and colonies with the right of abode in the United Kingdom; citizens of the United Kingdom and colonies who derive their citizenship through birth, descent, registration, or naturalization in one of the British dependent territories of Belize, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands, or one of the West Indies Associated States of Antigua, and St. Kitts-Nevis-Anguilla.

Persons holding passports or travel documents issued by the Holy See, and persons lawfully admitted into the U.S. for permanent residence coming to Canada directly from the U.S. are also exempt from visa requirements.

Visitors from countries other than those listed above must apply to a Canadian consular office for the required tourist visa. It is advisable to make the application *at least* two weeks before the anticipated date of travel. The application must be accompanied by the documentation enumerated in the first paragraph of this section.

3.12.2 ***Requirements for reentry into the U.S.*** An F-1 student must have the following materials in order to reenter the U.S. after a temporary absence: a valid passport and a valid visa (unless exempt from passport and visa requirements—see Section 2.2.4 and 2.3.2) and a current Form I-20 for reentry, issued by the authorized official at the school in which the student is enrolled or will enroll upon reentry (see Section 3.9).

The Form I-20 issued for reentry to the U.S. must indicate the date to which the student's authorized stay is valid. If the student has been admitted to the U.S. for a specific period, the date of expiration of his stay should be shown on the Form I-20. If he has been admitted for duration of status, the Form I-20 should

indicate the date the student is expected to complete his studies. That date will then be recorded on the Form I-94 at the time of reentry to the U.S. If the student has been granted off-campus work permission or practical training permission, that fact should be noted in the "remarks" section of the Form I-20.

It is not possible to revalidate an F-1 visa inside the U.S. An F-1 student who needs to revalidate his visa in order to reenter the U.S. after a temporary absence must apply for the revalidation at a U.S. consular office abroad. While it is possible for an alien to secure renewal of an F-1 visa in a foreign country other than his own, he may face more stringent requirements than he would if he were in his own country. In addition to proving his eligibility for an F-1 visa, he may have to convince the consul that he has a legitimate reason for making his renewal application outside his own country. In many instances the consul in the third country will find it necessary to check with the consular office in the student's place of residence. This can be costly in terms of time, and charges, if information is requested by cable rather than diplomatic mail.

The documents needed for visa revalidation are a valid passport, a current photograph, a valid Form I-20 completed by an authorized official of the school the visa applicant is attending, and proof of financial capability for continuing studies.

3.12.3. ***Automatic revalidation of visas.*** An expired F-1 visa may be considered to be automatically revalidated to the date of application for readmission to the U.S. (and therefore the visa in the passport need not have an expiration date which is current) provided the F-1 student:

1. is applying for readmission to the U.S. after an absence not exceeding 30 days solely in contiguous territory or adjacent islands other than Cuba;
2. has maintained and intends to resume his status as an F-1 student and is reentering the U.S. prior to the expiration of his previously authorized stay;
3. presents either a currently valid Form I-94 or a currently valid Form I-20 issued by the school he is authorized to attend and which contains the expiration date of his previously authorized stay;
4. is in possession of a valid passport;
5. does not require the authorization of his temporary admission to the U.S. under Section 212(d)(3) of the Act (a provision for waiver of excludability—see Section 8.5.1). [22 CFR 41.125(f)(1,2), 8 CFR 214.1(b)]

Furthermore, a person who entered the U.S. in a classification other than F-1 student, but whose status was subsequently changed to F-1 student, may be considered to have his previous visa automatically revalidated and converted to an F-1 visa if he meets the conditions stated above.

Thus, under these circumstances, an F-1 student whose visa has expired may be saved the necessity of applying for a new or revalidated visa at a consular post outside the U.S. [22 CFR 41.125(f)(1,2), 8 CFR 214.1(b)]

In order to prevent delays at the port of reentry, it is wise to add a special note in the "remarks" section of Form I-20 indicating that the student is eligible for automatic revalidation (or conversion) of visa under 22 CFR 41.125(f)(1,2).

3.13 Change of Status

3.13.1. ***Change to F-1 student status.*** An alien in any nonimmigrant status except C, D, J, or K may apply for a change to F-1 status if he has maintained lawful nonimmigrant status up to the time the application for change of nonimmigrant status is filed. Application is made on Form I-506 (Application for Change of Nonimmigrant Status). The Form I-506 must be accompanied by a properly executed Form I-20 from the admitting institution (applicant must complete page 2), the applicant's Form I-94, evidence of financial support, and a required fee (see Fee Schedule, Appendix 1).

A nonimmigrant B-2 visitor for pleasure may wish to change to F-1 student status under various sets of circumstances:

a. He has a B-2 visa bearing the notation, "prospective student." The *Foreign Affairs Manual* tells consular officers to write "prospective student" on a B-2 visa issued to a person who (i) intends to become a student but has not yet chosen a school here, and wishes to visit more than one school before making a selection, or (ii) has been admitted to a particular U.S. school and has a Form I-20 from that school, but intends to enter the U.S. more than 60 days before school opens. A person with a B-2 visa marked "prospective student" should routinely be able to obtain a change to F-1 status, following the procedure described below.

b. Conditions (i) or (ii) in the preceding paragraph may apply, but the consular officer has neglected to write "prospective student" on the B-2 visa.

c. He entered the U.S. in B-2 status and while here decided to attend school. He is admitted to a school and obtains a Form I-20.

d. He believed while outside the U.S. that he would encounter difficulty in securing an F-1 visa from a consular officer, so he got a B-2 visa and entered the U.S. intending to apply to change to F-1 status here.

Individuals in categories "a," "b," and "c" should be able to change to F-1 status. Those in category "d" will usually be denied a change of status. Those in categories "b" and "c" may have difficulty convincing INS of their good faith. The foreign student adviser should inform an applicant for a B-2 to F-1 change that the application may be denied if the B-2 visa is not marked "prospective student." Individuals in categories "b" and "c" should be instructed to provide INS with whatever information or evidence is available to support their contention that they are entitled to a change to F-1 status.

A change-of-status from F-2 to F-1 requires neither an application nor the payment of a fee. The request must be accompanied by the Form I-94 of the applicant, a properly executed Form I-20, evidence of financial capability, and information about passport validity. Although not required in the regulations, some district offices request a letter from the applicant outlining the circumstances for this change of status.

3.13.2. ***Change from F-1 student status.*** An F-1 student may apply for a change to any other nonimmigrant status for which he is eligible by completing Form I-506 (Application for Change of Nonimmigrant Status), and submitting the supporting documentation described in the instruction sheet attached to that form. A change-of-status from F-1 to F-2 requires neither an application nor the payment of a fee. The request must be accompanied by the Forms I-94 of the applicant and F-1 principal alien, proof of family relationship to the F-1 principal, and information about passport validity.

The INS will deny an application for change from F to J (Exchange Visitor) status if it appears that the change is desired primarily to enable the applicant's dependents to apply for permission to accept employment (see Section 3.15.4 and 4.13.4). An exception may be made, at the discretion of the district director, if the change in status will make the applicant subject to the two-year foreign residence requirement of Section 212(e) of the Act.

3.14 Departure or Termination of Status

3.14.1. ***Institutional reporting responsibilities.*** When an F-1 student fails to maintain his status or terminates his program, the authorized school official is required to report these facts to INS on Form I-20B. This form is sent by INS to the educational institution when the alien to whom it was issued is admitted to the U.S. or is authorized by INS to attend that institution. Form I-20B must be completed by the authorized school official and returned to INS if the student: (a) does not register personally at the school within 60 days of the date expected; or (b) carries less than a full course of study or fails to attend classes to the extent normally required; or (c) terminates his attendance at the school, unless he is granted practical training; or (d) terminates his practical training.

If for some reason the school does not receive a Form I-20B for an F-1 student authorized to attend the school, the institution may report the student's termination or failure to maintain status by a letter or other reporting device which should include the student's name, date of birth, country of birth and citizenship, dates of attendance at the school, and date and method of final departure, if known.

3.14.2. ***Sailing Permit (Certificate of Compliance).*** An F-1 student who has earned taxable income on or off campus is formally required to obtain a Sailing Permit, or Certificate of Compliance, from the Internal Revenue Service (stating that he has met all U.S. tax obligations), whenever that individual leaves the U.S. for destinations other than Canada or Mexico. No Sailing Permit is needed if taxable income has not been earned. For further information, consult Internal Revenue Service publications 518 "Foreign Scholars and Educational and Cultural Exchange Visitors" and 519 "U.S. Tax Guide for Aliens" (see Bibliography, Appendix 12).

3.15 Spouse/Dependent (F-2) Status

3.15.1. ***Eligibility.*** The spouse and unmarried minor children of an F-1 student may accompany the student to the U.S. or follow to join him at a later date. They will be accorded F-2 status provided they establish to the satisfaction of the consular official that (a) they have sufficient funds to cover their expenses, or other arrangements have been made to provide for their expenses; and (b) they intend in good faith and will be able to depart from the U.S. "upon the termination of the status of the principal alien." [22 CFR 41.45(b)]

3.15.2. ***Issuance of Form I-20 for F-2 dependents.*** If the dependent spouse and unmarried minor children will accompany the student to the U.S., the Form I-20 which the student submits to the U.S. consul abroad with his application for an F-1 visa for himself (see Section 3.3 and 3.4) may be used to request F-2 visas and entry in F-2 status for the spouse and unmarried minor children. If the dependents follow later to join the student, they will need to submit to the U.S. consular official a Form I-20 issued to the F-1 principal by the school in which the student is taking a full course of study, showing in item 1 the date of expiration of the student's authorized stay in the U.S. While instructions on Form I-20 state that items 2 and 3 do not need to be completed when it is for the purpose of allowing a spouse and unmarried minor children to join a student already in the U.S., in practice most institutions complete the entire Form I-20. In item 1, page 1, the purpose for which the Form I-20 is being issued is stated as "use by spouse and/or children in acquiring nonimmigrant F-2 classification." It is not required to state the names of the dependents on the face of the Form I-20, but it is considered to be good practice to state them in the "remarks" section.

3.15.3. ***Obtaining a visa and entering the U.S.***

3.15.3.1. ***Aliens subject to passport and visa requirements.*** An F-1 student's spouse and unmarried minor children who are required to have a valid passport and visa for entry to the U.S. (see Sections 2.2.4 and 2.3.3) must apply for an F-2 visa at a U.S. consulate or embassy abroad. The applicant must present the consular official with a Form I-20 completed in the name of the F-1 principal and such other documents as

may be required to demonstrate eligibility for F-2 status (see Sections 3.15.1 and 2.3).

If the visa application is approved, the Form I-20 is returned to the applicant for use in applying for admission to the U.S. When the family members arrive at the U.S. port of entry, they present their passports and the Form I-20 to the immigration inspector. Upon admitting the alien to the U.S., the inspector issues the alien a Form I-94, showing the date and place of entry, classification and authorized period of stay. The period will coincide with that of the F-1 principal, as shown in item 1, page 1, of the Form I-20.

3.15.3.2. *Aliens not subject to passport and visa requirements.* The F-1 student's spouse and unmarried minor children who are not subject to passport and visa requirements (see Sections 2.2.4 and 2.3.2) and who wish to enter the U.S. in F-2 status may apply directly to an immigration inspector at a U.S. port of entry. The procedure is the same as that followed by aliens required to meet passport and visa requirements except that the applicants are not required to present either passports or visas.

3.15.4. ***Employment.*** Individuals holding F-2 status may *not* accept employment or engage in business *under any circumstances.* Employment, in this context, is defined as the rendering of services, part time or full time, for financial or other compensation.

3.15.5. ***Extension of stay.*** Application for extension of stay for an F-2 spouse and minor children is included in the F-1 student's application for extension of stay. Information about the F-2 dependents' names, dates and places of birth, and passport expiration dates is entered on the Form I-538 (see Section 3.8), which is submitted to the INS along with Forms I-94 of the F-1 principal and all F-2 dependents. The periods of stay for the principal and the dependents will be extended to the same date.

Occasionally, when an F-2 dependent arrives in the U.S. at a date later than the F-1 student, the F-2 dependent's Form I-94 will reflect an earlier or a later date of expiration of study than does the Form I-94 of the F-1 student. When the F-2 dependent's period of stay ends *before* that of the F-1 principal, the Forms I-94 of both can be sent to the INS, with information concerning the validity of the dependent's passport, and a letter requesting that the F-2 dependent's period of stay be extended to coincide with that of the F-1 student. When the F-2 dependent's period of stay ends *later* than that of the F-1 principal, the F-2 dependent applies for an extension of stay along with the F-1 student, as described in the preceding paragraph.

3.15.6. ***Visits abroad and reentry.*** An F-2 dependent leaving the U.S. temporarily must be certain to have the documents necessary to enter the country visited and to reenter the U.S. (see Section 3.12). As in the case of the F-1 principal, the F-2 dependent needs a valid passport and visa (unless exempt from passport and visa requirements—see Sections 2.2.4 and 2.3.2) and a properly executed Form I-20. The I-20 should be completed in accordance with Section 3.15.2. F-2 dependents are eligible for automatic revalidation of visas on the same basis as F-1 students (see Section 3.12.3).

A special situation arises when the principal F-1 student travels outside the U.S., leaving the F-2 dependent in the U.S. Since a dependent's stay in this country is valid only while the F-1 student maintains status here, it is not legitimate for the dependent to remain in the U.S. while the F-1 student is absent from the country for any significant period of time.

3.15.7. ***Change of status***

3.15.7.1. *Change to F-2 nonimmigrant status.* A nonimmigrant alien may apply for a change to F-2 status if the spouse changes from another nonimmigrant classification to F-1, or if he becomes the spouse of an alien in F-1 status. For both situations, the applicant must provide financial verification proving he can support himself during his contemplated stay in the U.S.

In those instances when the dependent's spouse is changing to F-1 status, application for the change is included in the principal's application, and the dependent's Form I-94 is submitted along with that of the principal alien. In the case of marriage to an F-1 student, the nonimmigrant spouse (and children, if applicable) may apply for a change to F-2 status by submitting to the INS the Forms I-94 of both the principal and the applicant(s), a completed Form I-506 (Application for Change of Nonimmigrant Status), and the required fee (see Fee Schedule in Appendix 1).

No formal application or fee is required for a change of nonimmigrant status from F-1 to F-2 or vice versa. To change from F-1 to F-2 status, the applicant should submit to INS with his request the Forms I-94 of the principal and dependent, proof of a family relationship to the F-1 principal, and information about passport validity. Although not required in the regulations, some district offices request a letter from the applicant outlining the circumstances for this change of status. To change from F-2 to F-1 status, the applicant should submit to INS with his request information about passport validity, evidence of financial capability, and Form I-20.

3.15.7.2. *Change from F-2 nonimmigrant status.* A nonimmigrant in F-2 status is eligible for a change to another nonimmigrant classification if he can meet all the requirements for the desired classification. The applicant must complete Form I-506 (Application for Change of Nonimmigrant Status) and send it to the INS along with his Form I-94, the required fee (see Fee Schedule in Appendix 1), and the other materials specified on the instruction sheet attached to the Form I-506. No formal application or fee is required for change from F-2 to F-1 status.

3.15.8. ***Departure or termination of status.*** A nonimmigrant holding F-2 status must terminate that status and depart from the U.S. "upon the termination of the status of the principal F-1 alien." [22 CFR 41.45(b)]

SECTION 4

EXCHANGE VISITOR (J) STATUS

4.1 General Information and Purposes

Exchange Visitor status is used to bring to the U.S., for a variety of educational purposes, students, trainees, teachers, professors, research scholars, international visitors, or medical trainees under the sponsorship of an agency or organization which has been designated as an Exchange Visitor sponsor by the International Communication Agency.

4.1.1. ***Enabling legislation and definition.*** Section 101(a)(15)(J) of the Act defines an Exchange Visitor as "an alien having a residence in a foreign country which he has no intention of abandoning who is a *bona fide* student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Secretary of State (since 1978, by the International Communication Agency)* for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him." The principal Exchange Visitor is designated as being in J-1 status; the spouse and minor children are designated as being in J-2 status.

4.1.2. ***Application for Exchange Visitor Program designation.*** To be eligible to apply for an Exchange Visitor Program, a potential sponsor must be a "reputable U.S. agency or organization or recognized international agency or organization having U.S. membership and offices . . . ."[22 CFR 514.1] A foreign agency or organization is not eligible to apply. Application is made to the Chief, Exchange Visitor Program Designation Staff, International Communication Agency, Washington, D.C. 20547, on Form IAP-37 (Exchange Visitor Program Application). If the application is approved, the International Communication Agency (ICA) will assign a program number and program description and will designate the officer signing the application as the "Responsible Officer" for the approved Exchange Visitor Program. In the original application or subsequently, the Responsible Officer may name an Alternate Responsible Officer or Officers who will share the responsibilities of administering the program. Correspondence between the Exchange Visitor sponsor and ICA may be carried on only by the Responsible Officer or the alternate(s). [22 CFR 514.11]

4.1.3. ***Obligations and duties of sponsor and Responsible Officer.*** The Exchange Visitor sponsor, and specifically the Responsible Officer and the alternate(s), are required to administer the designated program in accordance with regulations prescribed by the ICA. Sponsor obligations include the following:

a. To notify INS when a participant's sponsorship is terminated or when a participant remains beyond his authorized stay, ceases to maintain Exchange Visitor status, or has completed the activity and objective for which he entered the U.S.;

b. To provide guidance and instructions to participants to enable them to maintain proper status, obtain necessary extensions of stay, complete the objectives for which they came to the U.S., and return to their residence abroad;

c. To instruct participants regarding extensions of stay and to provide a participant who needs and is qualified for an extension of stay with Form IAP-66 (Certificate of Eligibility for Exchange Visitor Status) showing the period and terms of the extension desired;

d. To endorse Form IAP-66 in part III if the participant obtains a properly completed Form IAP-66 from

* In 1978 the newly created International Communication Agency assumed the duties of the former Bureau of Educational and Cultural Affairs of the Department of State. Therefore, references in legislation and in regulations to the Department of State relating to educational and cultural affairs should now properly be to the International Communication Agency, and such references in this *Manual* are made to ICA.

another sponsor and if the present Responsible Officer or alternate considers the proposed program transfer to be necessary or desirable to enable the Exchange Visitor to complete his educational objectives;

e. To submit reports to ICA as are requested for the purposes of program review and evaluation;

f. To comply with specific criteria established by ICA for certain types of programs; and

g. To discharge such other obligations as the ICA may require. [22 CFR 514.12]

4.1.4. ***Exchange Visitor Program numbers.*** Each approved Exchange Visitor Program is assigned a number by the ICA. Types of programs can be identified by their numbers, as follows: [22 CFR 514.16(a)]

G-1: Programs sponsored by ICA.
G-2: Programs sponsored by the Agency for International Development.
G-3: Programs sponsored by the Department of State.
G-4: Programs sponsored by international agencies or organizations in which the U.S. Government participates.
G-5: Programs sponsored by other national, state, or local government agencies.
P-1: Programs sponsored by educational institutions such as schools, colleges, universities, seminaries, libraries, museums, and institutions devoted to scientific and technological research.
P-2: Programs sponsored by hospitals and related institutions.
P-3: Programs sponsored by nonprofit associations, foundations, and institutes.
P-4: Programs sponsored by business and industrial concerns.

The Responsible Officer must refer to the assigned program number in any correspondence with ICA, INS, or consular officers regarding the program or participants in the program. [22 CFR 514.16(b)]

4.1.5. ***Eligibility requirements for Exchange Visitor status.*** The following types of persons are eligible for documentation as Exchange Visitors (quotations are from 22 CFR 514.2):

(a) *Students*, defined as persons coming to the U.S. "for the purpose of pursuing formal courses, or any combination of courses, research, or teaching, leading to a recognized degree or certificate, in an established school or institution of learning," and for a period of up to 18 months of practical training after completing a degree or certificate program.* Although not specifically included in the regulations, students who are pursuing a substantial program of formal course work without reference to a degree may also be documented as Exchange Visitors.

School officials are sometimes puzzled as to whether to document students as J Exchange Visitors or as F students. Exchange Visitor status is primarily intended for students who are in some way "sponsored," and F student status for those who are not sponsored. However, school officials have wide latitude in choosing J or F status for their students, depending upon which classification best meets the needs of the school and the students.

The Chief of the Exchange Visitor Programs Designation Staff *recommends* that schools document students as Exchange Visitors only when the student meets one of the following five conditions:

1. The student's program is funded in whole or in part by the U.S. Government, the student's home government, or an international organization.

2. The student is subject to the two-year home country residence requirement by virtue of the Exchange Visitor Skills List (see Section 4.9.1.2).

3. The student will receive full or partial financial support from the host institution. Waiver of all or part of tuition is considered financial support.

4. The student has a special relationship with the institution, such as being a participant in a reciprocal exchange program or cooperative educational development program, or being financially supported by an employer, agency, foundation, university, or other organization, abroad or in the U.S., for which the school acts as a surrogate sponsor.

5. The student is currently in the U.S. in Exchange Visitor status and is required to change schools in order to continue or complete the educational program objective initiated under the previous J-1 sponsorship.

Advisers and other school officials should note that these guidelines are only recommendations and do not have the force of law or regulations. Therefore, under present regulations, schools are free to document any full-time student as an Exchange Visitor or as an F student, depending upon which status best suits their programs.

(b) *Trainees*, defined as persons coming to the U.S. "for the purpose of obtaining on-the-job training with firms, institutions, and/or agencies in a specialized field of knowledge or skill for periods not to exceed 18 months." Advisers should note that this category is available only to trainees in programs specially approved for that purpose. It does *not* apply to an Exchange Visitor student who is engaged in practical training after completing an academic program. Such a practical trainee remains a "student" and is not considered a "trainee" in this sense.

(c) *Teachers*, defined as persons coming to the U.S. "for the purpose of teaching in established primary or

* In June 1981, the Exchange Visitor Programs Designation Staff amended the program descriptions of academic institutions to delete the term "practical training" from those program descriptions. This change was not meant to prohibit academic institutions from authorizing practical training to students, but only to prevent them from bringing Exchange Visitors to the U.S. specifically for the purpose of practical training. That privilege is reserved for those agencies whose program descriptions specifically authorize it. See "Trainees" below.

secondary schools, or established schools offering specialized instruction."

(d) *Professors*, defined as persons coming to the U.S. "for the purpose of teaching or conducting advanced research, or both, in an established institution of higher learning." Note that the category of "professors" includes both those who will teach and those who will conduct research in an institution of higher education. Therefore, most research staff in institutions of higher education can be documented as "professors" or as "researchers" (see below) or both. The line between professors and researchers is unclear and frequently nonexistent.

(e) *Research scholars* or *specialists*, defined as persons coming to the U.S. "for the purpose of undertaking or participating in research or in demonstrating specialized knowledge or skills." If a research scholar is undertaking research in an institution of higher education, he may be documented as either a research scholar or a professor or both.

(f) *International visitors*, defined as persons coming to the U.S. "for the purpose of travel, observation, consultation, research, training, sharing, or demonstrating specialized knowledge or skills, or participating in organized people-to-people programs."

(g) *Professional trainees*, defined as persons coming to the U.S. "for the purpose of pursuing clinical training in the medical and allied fields."

From the above, it can readily be seen that a wide variety of aliens is eligible for Exchange Visitor status at the discretion of program sponsors, and that many aliens who might be classified as F students, H temporary workers or trainees, or B visitors might also be classified as Exchange Visitors. Program sponsors will want to consider the distinctive features of Exchange Visitor status discussed below in deciding whether to document educational visitors as Exchange Visitors or in some other nonimmigrant classification.

4.1.6. ***Distinctive features of Exchange Visitor status.*** The following are some of the distinctive features of Exchange Visitor status which should be considered by sponsors in deciding whether to document an individual alien in this or some other status for which he may be eligible:

4.1.6.1. *Employment.* Regulations governing employment of Exchange Visitor students and their dependents are more flexible than those governing F-1 students and their dependents. Under certain conditions, off-campus work for an Exchange Visitor student may be authorized by the program sponsor without approval by INS. J-2 dependents may apply to INS for work permission and such permission may be granted or denied, whereas dependents in F-2, H-4, and B-2 status are not eligible to apply for work permission and may not accept employment under any circumstances. Exchange Visitor trainees, teachers, professors, or research scholars may be employed by more than one employer provided the program sponsor approves and the employment is an integral part of the program for which the Exchange Visitor came to the U.S., while H workers and trainees must have a separate petition approved for work for each employer. See Section 4.5 for discussion of employment regulations.

4.1.6.2. *Two-year home country residence requirement.* Certain Exchange Visitors are not eligible for immigrant visas or permanent resident status or for H temporary worker or trainee or L intracompany transferee status until they have resided and been physically present in their country of nationality or last foreign residence for a period of two years following departure from the U.S. Exchange Visitors who are subject to this two-year home country residence requirement are those (1) who are financed, in whole or part, directly or indirectly, by the U. S. Government or by their own governments; or (2) who are nationals or residents of countries in which their specialized skills are needed as determined by the ICA; or (3) who came to the U.S. or acquired Exchange Visitor status for the purpose of receiving graduate medical education or training. [Act 212(e)] This is an important and strictly enforced section of the law which should be considered carefully by program sponsors before documenting anyone in Exchange Visitor status. See Section 4.9 for more detailed discussion of the two-year home country residence requirement, government financing, the Exchange Visitor Skills List, and waivers of the residence requirement.

4.1.6.3. *Ease of documentation.* It is easier and faster and it requires less paperwork to document an educational visitor as an Exchange Visitor than as an H temporary worker or trainee. Furthermore, no fee is required to issue Form IAP-66; the filing of an H petition requires a fee (see Fee Schedule in Appendix 1). These factors can be important, especially when time and costs require consideration, if the prospective visitor is eligible for either J or H classification.

4.2 Issuance of Form IAP-66

When the program sponsor has determined that an individual alien should be documented as an Exchange Visitor, the Responsible Officer or his alternate prepares Form IAP-66 and forwards it to the alien with instructions for applying for a J-1 visa and/or entry into the U.S. in J-1 status. The Form IAP-66 is the basic document needed to obtain a J-1 visa and/or to obtain and maintain valid Exchange Visitor status. It identifies the participant and the sponsor, specifies the nature of the program for which the Exchange Visitor is coming to the U.S., states the inclusive dates of the program sponsorship up to a maximum of one year, and indicates the source and amount of financing for the Exchange Visitor's stay in the U.S. Upon processing by the consular officer or immigration inspector, it also

indicates whether the Exchange Visitor is subject to the two-year home country residence requirement.

4.2.1. ***Obtaining Form IAP-66.*** Form IAP-66 is a four-page form issued by the Exchange Visitor Programs Designation Staff of ICA. Supplies of Form IAP-66 are sent automatically to Responsible Officers by the Exchange Visitor Programs Designation Staff according to a schedule established upon approval of the program. Additional supplies of the form, or revision of the schedule and number of forms to be sent automatically, can be requested by the Responsible Officer on Form IAP-87, available from the Exchange Visitor Programs Designation Staff. Other changes in the approved program, such as changes in designation of the Responsible Officer or alternates and changes of address and telephone number, may also be requested on Form IAP-87. Program sponsors are not authorized to produce their own Forms IAP-66 or to release blank Forms IAP-66 to other sponsors; all Forms IAP-66 must be issued directly to the individual sponsor by the Exchange Visitor Programs Designation Staff, and the Responsible Officer must control the use of the forms so that they do not fall into unauthorized hands. [22 CFR 514.14(h) and Special Notice to Responsible Officers dated July 14, 1980, from the Chief, Exchange Visitor Programs Designation Staff] Since October 1, 1981, all Forms IAP-66 are serially numbered to prevent misuse. Responsible Officers are not required to account for each form by number, but the numbers identify the Responsible Officer and program to which each form was issued so that completed forms which are suspect can be traced to their origin.

4.2.2. ***Completing Form IAP-66.*** The Responsible Officer should complete Form IAP-66 carefully and precisely for each prospective Exchange Visitor according to the detailed instructions provided in the ICA publication *Codes for Educational and Cultural Exchange*. This publication is issued automatically to each program sponsor; additional copies are available (to Responsible Officers or alternates only) from the Exchange Visitor Programs Designation Staff.

The information required on the original Form IAP-66 issued to a prospective Exchange Visitor includes the participant's name, sex, date of birth, place of birth, country of legal permanent residence, position in home country, and prospective address in the U.S.; the Exchange Visitor sponsor's name, program number, and program description; the inclusive dates of sponsorship up to a maximum of one year, the participant's Exchange Visitor category and specific educational field or activity to be engaged in, the source(s) and amount(s) of financial support, and the signature and title of the Responsible Officer or alternate. Some of this is information which is not normally required by institutions in the regular processing of applications for admission as students or appointment as visiting scholars, so care must be exercised to obtain all of the needed information in a timely manner.

Each item on Form IAP-66 must be completed with care. Special attention, however, should be given to the participant's country of legal residence, position in home country, specific field of study or activity, and source and amount of financial support, as these items will all be factors in determining whether the Exchange Visitor will be subject to the two-year home country residence requirement. Furthermore, accurate information and coding is necessary so that ICA can maintain current data about the Exchange Visitor program in general. This information is used, among other things, as the basis for revisions of regulations and procedures; therefore, it is in the best interests of all concerned to provide accurate and precise information on Form IAP-66.

4.2.3. ***Financial verification.*** Although it is not specifically required by the regulations, the prudent Responsible Officer will want to verify, to his own satisfaction and by whatever means he considers valid, that the prospective Exchange Visitor has financial resources which are adequate to provide for all of his expenses in the U.S. Failure to do so can result in great difficulties for the Exchange Visitor and in embarrassment for the program sponsor. Consular officers who issue visas have final responsibility for verifying financial support, but those officers, the Department of State, ICA, and INS depend to a great extent upon program sponsors in such matters.

4.3 Application for Visa and Entrance to the U.S.

Upon proper completion of Form IAP-66, the Responsible Officer should forward the first three copies (white, yellow, and pink) of the form to the prospective Exchange Visitor with instructions for applying for a J-1 visa and/or entering the U.S. in Exchange Visitor status. The Responsible Officer retains the fourth (green) copy of the Form IAP-66 for his own file.

4.3.1. ***Aliens subject to passport and visa requirements.*** Most aliens are required to have a valid passport and a valid visa to enter the U.S. (for exceptions, see Section 4.3.2). Such an alien who is documented as an Exchange Visitor should be instructed by the Responsible Officer to apply for a J-1 Exchange Visitor visa at the U.S. consulate or embassy which has jurisdiction over his place of residence. The applicant must present to the consular officer a valid passport and a properly executed Form IAP-66, which he has signed and on which he has completed the information required on page 2 of the form. He will also be required to present other documents which may be requested by the consular officer to establish that he is a *bona fide* nonimmigrant Exchange Visitor, has adequate financial support, and meets all of the other requirements for Exchange Visitor status, including having a residence

in his home country which he has no intention of abandoning.

If the consular officer approves the visa application, he will stamp the visa on a page of the alien's passport and note the period of validity of the visa and the number of entries for which it is valid. The consular officer will also note on Part II of the Form IAP-66 whether the Exchange Visitor is subject to the two-year home country residence requirement. He will then return all three copies of the Form IAP-66 to the Exchange Visitor.

Upon arrival at the U.S. port of entry, the alien presents his passport, visa, and all three copies of Form IAP-66 to the immigration inspector. If he is found to be admissible to the U.S., the immigration inspector will return to him the third (pink) copy of Form IAP-66, noted in item 6 as to the authorized length of stay, and will send the first (white) copy to the INS office having jurisdiction over his intended place of temporary stay and the second (yellow) copy to ICA. The immigration inspector will also issue to the Exchange Visitor Form I-94 (Arrival-Departure Record), which indicates the date and place of his admission to the U.S., his classification, and the date to which his stay is authorized. The Exchange Visitor has, by this process, been "examined" and lawfully admitted to the U.S. for the period indicated on Form I-94.

4.3.2. ***Aliens not subject to passport and visa requirements.*** Certain aliens are not required to have valid passports or visas for entry to the U.S. The most common examples are Canadian citizens, landed immigrants of Canada having a common nationality with Canadians, and natives and residents of the Trust Territory of the Pacific Islands (see sections 2.2.4 and 2.3.2 and 8 CFR 212.1). Such an alien should be instructed to apply directly to an immigration inspector at a U.S. port of entry for admission as a J-1 Exchange Visitor, bypassing the procedure of applying for a J-1 visa. The procedure at entry is the same as that described above for aliens who are subject to passport and visa requirements except that the applicant for entry is not required to present either a passport or a visa. Note: Canadians who enter the U.S. from outside the Western Hemisphere must have passports; they are not required to have visas. [8 CFR 212.1(a)]

4.3.3. ***Temporary admission with Form I-515.*** Sometimes an alien will have lost or misplaced Form IAP-66 or for other reasons be unable to produce that form at the port of entry. In such a case, if the immigration inspector determines that the applicant for entry has a valid J-1 visa and is qualified in all other respects for admission as an Exchange Visitor, the inspector will admit the alien to the U.S. in Exchange Visitor status for a period of 30 days and issue him Form I-515 (Notice to Student or Exchange Visitor). That form instructs the Exchange Visitor to submit by mail to the INS office having jurisdiction over his place of activity a current and valid Form IAP-66 and his Form I-94. Upon receipt of these forms, the INS office will grant the Exchange Visitor an extension of stay for the period of time stated on Form IAP-66 and will note that extension on the Form I-94.

If the immigration inspector is not able to determine that the applicant is eligible for admission as an Exchange Visitor, he may parole the alien into the U.S. for "deferred inspection," which requires that the alien report in person to an INS office (see Section 8.2.3).

4.4 Maintenance of Status

After an Exchange Visitor is admitted to the U.S., he maintains his status by carrying out the program described on Form IAP-66.

4.4.1. ***Students.*** An Exchange Visitor student must be engaged full-time in a program of course work or any combination of courses, research, or teaching leading to a degree, certificate, or other educational objective in order to maintain status as an Exchange Visitor. If his program meets the criteria described above and he is working under the supervision of an educational institution, he is not required to be formally registered at the institution to maintain status. For example, a doctoral student who has completed all his work except the thesis may choose to carry on that work without formally registering if this arrangement is acceptable to his institution. If the student fails to maintain status, the program sponsor is required to report that fact to INS (see Section 4.12.1 for procedures).

4.4.2. ***Other Exchange Visitors.*** All other Exchange Visitors must carry out the programs described on their Forms IAP-66, such as research or teaching, and including additional paid employment, provided those activities have the approval of the program sponsor and are consistent with the program described on Form IAP-66. [22 CFR 514.24(a)] (Some sponsors choose to issue a new Form IAP-66 specifying any program addition, although this is not required by the regulations.) Failure to maintain status must be reported to INS by the program sponsor (see Section 4.12.1 for procedures).

4.4.3. ***Disclosure of information; criminal activity.*** Exchange Visitors, like all other nonimmigrants, are required to disclose fully and truthfully all information requested by INS, regardless of whether the information requested is material. Failure to do so constitutes a violation of status. [8 CFR 214.1(f)] They are also required, as a condition of their admission, to obey all laws which prohibit the commission of crimes of violence. Conviction of a crime of violence for which a sentence of more than one year could be imposed, regardless of whether such a sentence is in fact imposed, constitutes a violation of status. [8 CFR 214.1(g)] While there is some question as to the Constitutional legitimacy of these conditions of maintaining

status, they have not been tested in the courts and remain as part of the regulations.

4.5 Employment

The program sponsor has wide authority to authorize employment, within limits defined by the regulations, for those holding Exchange Visitor status.

4.5.1. ***Students.*** Exchange Visitor students may be employed with the authorization of the sponsor in the following ways:

4.5.1.1. *On-campus assistantship or fellowship.* A student who is enrolled in a full course of study may be employed on campus pursuant to the terms of a scholarship, fellowship, or assistantship if the employment is related to his course of study. Such employment is considered to be a part of his program of study and requires no authorization from INS. [22 CFR 514.24(d)]

4.5.1.2. *Part-time on- or off-campus employment.* A student may be authorized to accept part-time employment not related to his program of studies if "(1) such employment is required by an urgent financial need which has arisen since acquiring Exchange Visitor status; (2) it does not cause the participant to reduce preparation and studies below the full-time level; and (3) it has the written approval of the sponsor signed by the Responsible Officer or alternate Responsible Officer." [22 CFR 514.24(b)]

4.5.1.3. *Vacation employment.* During periods of school vacation, Responsible Officers may authorize full-time employment for Exchange Visitor students provided such employment meets the criteria stated above for part-time employment. [22 CFR 514.24(c)]

4.5.1.4. *Practical training.* An Exchange Visitor student may be authorized a period of up to 18 months of employment for practical training directly related to his program of study after he has completed a degree, certificate, or other substantial program of formal course work. Such a period of practical training can be authorized by the Responsible Officer or alternate "provided: (1) the training is needed to round off the academic studies, (2) the training is not available in the student's home country, (3) the training is directly related to the academic program, and (4) the training is authorized in writing by the Responsible Officer of the Exchange Visitor Program involved." [22 CFR 514.2(a)] It is not necessary to issue a new Form IAP-66 to authorize practical training unless the Exchange Visitor needs an extension of stay; a written statement signed by the Responsible Officer or alternate is sufficient. If the Exchange Visitor needs an extension of stay, the Responsible Officer or alternate should issue a new Form IAP-66 stating in item 4 that the student is engaged in a program of practical training subsequent to completing a degree, certificate, or other substantial program of formal course work.

It should be noted that Exchange Visitor students are eligible for up to 18 months of practical training, whereas F-1 students are limited to a maximum of 12 months of practical training. A maximum of 12 months extension of stay is possible on any one Form IAP-66.

4.5.2. ***Other categories of Exchange Visitors.*** Other categories of Exchange Visitors may engage in the employment stated on their Forms IAP-66. Additional paid employment may be authorized by the program sponsor provided it is consistent with the purposes for which the Exchange Visitor entered the U.S., falls within the sponsor's Exchange Visitor Program description, and is an integral part of the participant's program. For example, a program sponsor may authorize an Exchange Visitor professor to teach an additional course or courses at another institution, or may authorize an Exchange Visitor researcher to undertake additional research or consulting for another institution or in industry, provided the additional employment meets the criteria stated above. The Exchange Visitor sponsor should authorize any approved employment in writing, either in a letter or on Form IAP-66. [22 CFR 514.24(a)]

4.5.3. ***Social Security and income tax.*** J-1 Exchange Visitors in all categories who have been authorized by their program sponsors to accept employment are not subject to Social Security tax (see Mutual Educational and Cultural Exchange Act of 1961 and Social Security Administration publication *Social Security Coverage for Foreign Students and Exchange Visitors*, available from any Social Security office). They *are* subject to withholding and payment of federal and state income taxes unless they are exempt by a provision of a tax treaty. (See IRS publication 518, *Foreign Scholars and Educational and Cultural Exchange Visitors*.)

4.6 Extension of Stay

When an Exchange Visitor is admitted to the U.S., he is issued Form I-94 (Arrival-Departure Record) which indicates the date to which his authorized stay is valid. He must either depart from the U.S. by that date or secure an extension of stay, if that is necessary for the accomplishment of his objectives.

4.6.1. ***Procedures.*** If an extension of stay for an Exchange Visitor is warranted, the Responsible Officer prepares a Form IAP-66, indicating the purpose in the upper right-hand corner box on the form. The Exchange Visitor completes page 2 of the first copy of the Form IAP-66 and submits all three copies and his Form I-94 to the INS office having jurisdiction over his place of study or activity. The Exchange Visitor's passport must be valid for six months beyond the projected stay (for exceptions, see Section 2.2.4). If it is not valid for an appropriate length of time, the Exchange Visitor should be instructed to submit his passport to the consulate of his country having jurisdiction over his place

of study or activity for extension before submitting his application for extension of stay to INS. If INS approves the extension of stay, it will be noted on the reverse side of Form I-94, and the Form I-94 and the third (pink) copy of Form IAP-66 will be returned to the Exchange Visitor. The Exchange Visitor should then staple the Form I-94 and the pink copy of the Form IAP-66 inside his passport.

The Exchange Visitor should not submit his passport to the INS when applying for extension of stay. The validity of his passport is indicated by him in completing page 2 of the white copy of the Form IAP-66 before sending it to INS.

4.6.2. ***Limitations of stay.*** Exchange Visitors are limited in the length of their stay in the U.S. as follows [22 CFR 514.23]:

a. Students: as long as they pursue substantial scholastic programs leading to recognized degrees, certificates, or a specific educational objective, plus a maximum of 18 months for practical training.

b. Teachers, professors, research scholars, and specialists: three years.

c. International visitors: one year.

d. Professional trainees: two years for foreign medical graduates pursuing graduate medical education or training, with the possibility of a third year under specified conditions (see Section 4.11.5 D). This limitation was mandated by Congress in Public Law 94-484. ICA has requested a change in the law to permit foreign medical graduates to remain for the length of time needed to complete the specialized training for their individual specialties, but Congress has not as yet made that change. Meanwhile, INS is granting extended voluntary departure to some medical doctors to permit them to complete their training programs. (See *Interpreter Releases*, September 5, 1981, p. 446.)

e. Graduate nurses: two years.

f. Medical technologists, medical record librarians, medical record technicians, radiologic technicians, nurse anesthetists, and other participants in similar categories: length of the approved training program plus a maximum of 18 months for practical training, not to exceed a total of three years.

g. Business and industrial trainees: 18 months.

These limitations apply to the total length of stay as an Exchange Visitor. An Exchange Visitor who transfers from one program sponsor to another cannot thereby prolong his stay in the U.S. beyond the limitations stated above, but will be subject to the time limitations for his particular category. Generally speaking, an Exchange Visitor may not transfer from one category to another (see Section 4.7.2.), and may never do so if it is apparent that the reason for his attempted change of category is principally to delay his departure from the U.S.

4.6.3. ***Requests for extensions of stay beyond the time limitations.*** If an Exchange Visitor must have an extension of stay beyond the time limitations stated above in order to complete the program for which he was admitted to the U.S., the program sponsor must attach to the Form IAP-66 issued for the extension a written statement containing "evidence that there are exceptional circumstances or that additional time is required to complete highly specialized training, and that the participant's future intentions clearly involve the participant's departure from the United States in accordance with the objectives of the Exchange Visitor Program." [22 CFR 514.22(b)(2)] Usually such applications, if they are for significant periods of time, are referred by INS to ICA for an advisory opinion as to whether the extension is consistent with the purposes of the Exchange Visitor Program. INS has final authority to grant or deny the application. Ordinarily such extensions are granted only under the most unusual circumstances involving the completion of the original objectives of the Exchange Visitor, not for a new objective or purpose, and never for the convenience of the program sponsor.

4.7 Program Transfer

An Exchange Visitor in any category may transfer from one program sponsor to another if the purpose of his transfer is to complete the objective for which he was admitted to Exchange Visitor status.

4.7.1. ***Procedures.*** To transfer from one program sponsor to another, the Exchange Visitor obtains from the new sponsor a Form IAP-66 accepting him under the new sponsorship. If the previous sponsor agrees that the transfer is for the purpose of completing the original objective and is consistent with the goals of the Exchange Visitor Program, the Responsible Officer endorses the new Form IAP-66 in Part III, thus releasing the Exchange Visitor from the original sponsorship. The Exchange Visitor then submits the properly completed Form IAP-66 and his Form I-94 to the INS office having jurisdiction over his original place of activity to request transfer of program sponsorship and, if necessary, extension of stay. Action taken by INS on the request will be noted on the Exchange Visitor's Form I-94, which will be returned to him along with the third (pink) copy of Form IAP-66.

If the Exchange Visitor is unable to obtain the endorsement of the original sponsor in Part III of Form IAP-66, he may apply for transfer of program without that endorsement. However, he and/or his new program sponsor must explain why he is unable to obtain the endorsement and why the transfer of program is necessary. Such applications are referred by INS to ICA for an advisory opinion as to whether the transfer is felt to be in the best interests of the Exchange Visitor Program; they are seldom approved. INS may also refer to ICA any other applications for transfer of program or extension of stay if there is any question as to whether the applicant is attempting to extend his stay

beyond the completion of the original objective for which he came to the U.S. or if it appears that the participant is not making clear progress toward a definite objective. [22 CFR 514.22(c)(2)]

If the Exchange Visitor is leaving the U.S. temporarily between sponsors, it is not necessary for him to obtain the endorsement of the previous sponsor or submit an application for program transfer to INS. Instead, he simply uses the Form IAP-66 provided by the new sponsor to reenter the U.S., and he is then officially under the sponsorship of the new program. Such a reentry under new sponsorship should not be construed as the beginning of a new program of activity, and the Exchange Visitor is subject to the limitations of time for his total stay as specified for his particular category. If the Exchange Visitor is absent from the U.S. for a significant period of time (sometimes interpreted to mean two years, although the regulations are silent on this point and allow consular officers and immigration inspectors much discretion), he can reenter the country under new sponsorship for a new program of activity, and the time limitations would apply only to that new program of activity.

4.7.2. ***Change of category.*** A change of category within Exchange Visitor status (i.e., from student to professor) is usually considered a change in program objective, and therefore not approved. The regulations state that "unless very unusual or extenuating circumstances exist. . ." the following changes in category shall not be approved: nurse to doctor of medicine; student to research scholar or teacher; research scholar to student or teacher; teacher to research scholar or student. [22 CFR 514.22(c)(1)]

If a change of category is necessary for an Exchange Visitor to complete the objective for which he came to the U.S., the Form IAP-66 submitted to INS should be accompanied by a letter from the Exchange Visitor and/or the program sponsor explaining the circumstances and the necessity for the cateogry change, and emphasizing that such a change is necessary for the completion of the original objective. Such applications are frequently referred by INS to ICA for an advisory opinion. They are approved only if there is convincing evidence that the original objectives of the Exchange Visitor are being served. They are seldom approved if it is apparent that the Exchange Visitor has changed his objectives or embarked upon a new objective.

4.8 Visits Abroad and Reentry

An Exchange Visitor who wishes to make a temporary visit outside the U.S. and return to complete his program here must be sure to have the proper documents to enter the country he wishes to visit and to reenter the U.S.

4.8.1. ***Entry into another country.*** If the Exchange Visitor wishes to travel to his country of citizenship or permanent residence, his valid passport or travel document will assure his entry. If he wishes to travel to another country, he may have to secure a visa or entry permit. Those wishing to visit other countries should contact the consulate or embassy of the country to be visited to determine what documents are necessary for entry. See Section 3.12.1.1 for information regarding the necessity to have a visa to enter Canada from the U.S.

4.8.2. ***Requirements for reentry to the U.S.*** An Exchange Visitor making a temporary visit outside the U.S. must have the following documents in order to reenter the U.S. in Exchange Visitor status: a valid passport and a valid visa (unless exempt from passport and visa requirements, see Sections 2.2.4 and 2.3.2), and a current third (pink) copy of the Form IAP-66 properly noted in item 3 to indicate the date to which the Exchange Visitor's authorized stay is valid. If the Exchange Visitor has lost the pink copy of Form IAP-66, the program sponsor may issue a copy of the original form.

If the Exchange Visitor's visa is no longer valid, or if the number of authorized entries has already been used, he must apply to a U.S. consulate or embassy outside the U.S. for a new visa or revalidation of his old visa (unless he is eligible for automatic revalidation of his visa, see Section 4.8.3). For this purpose, the pink copy of the Form IAP-66 is adequate. It may be advisable, however, for the program sponsor to provide a complete new Form IAP-66 in order to avoid possible difficulties at the consulate.

Until 1974, it was possible to apply to the Visa Office in Washington, D.C., for revalidation of J-1 visas, but this is no longer possible. J-1 visas can be revalidated only at consular posts outside the U.S.

4.8.3. ***Automatic revalidation of visa.*** An Exchange Visitor visa may be considered to be automatically revalidated upon application for readmission to the U.S. (and therefore the visa in the passport need not have an expiration date which is current) provided the following circumstances prevail: (a) the Exchange Visitor is applying for readmission to the U.S. after a temporary absence of not more than 30 days during which time he has been "solely in contiguous territory or adjacent islands other than Cuba" (Canada, Mexico, or the Caribbean islands other than Cuba); (b) he has maintained and intends to resume status as an Exchange Visitor and his previously authorized stay is valid at the time of his reentry; (c) he presents either a currently valid Form I-94 or a currently valid pink copy of Form IAP-66 noted in item 3 to show the expiration date of his authorized stay; (d) he has a valid passport; and (e) he does not require the authorization of his temporary admission to the U.S. under Section 212(d)(3) of the Act (a provision for waiver of grounds of excludability—see Section 8.5.1). Furthermore, a person who entered the U.S. in a classification other than Exchange Visitor but whose status was subse-

quently changed to Exchange Visitor may be considered to have his previous visa automatically revalidated and converted to an Exchange Visitor visa if he meets the criteria stated above. Thus, under these circumstances, an Exchange Visitor whose visa has expired may be saved the necessity of applying for a new or revalidated visa at a consular post outside the U.S. [22 CFR 41.125(f)(1,2), 8 CFR 214.1(b)]

4.8.4. ***Aliens exempt from passport and visa requirements.*** Exchange Visitors who are exempt from passport and visa requirements (see Sections 2.2.4 and 2.3.2) need have only a valid and current pink copy of Form IAP-66 to reenter the U.S. after a temporary absence outside the country.

4.9 Two-year Home Country Residence Requirement

The two-year home country residence requirement is one of the most important special characteristics of Exchange Visitor status and should be thoroughly understood by the program sponsor and by each Exchange Visitor.

4.9.1 ***Definition and applicability.*** Certain Exchange Visitors are not eligible for permanent resident, H temporary worker or trainee, or L intracompany transferee status in the U.S. until they have resided and been physically present in their country of nationality or last permanent residence for an aggregate of at least two years following departure from the U.S. This restriction applies to (1) those Exchange Visitors whose programs were financed in whole or part, directly or indirectly, by the U.S. Government or the government of their home country, or (2) those Exchange Visitors who, at the time of their acquisition of Exchange Visitor status, were nationals or residents of countries designated by ICA in which their particular specialized knowledge or skills are needed, or (3) those Exchange Visitors who came to the U.S. or acquired Exchange Visitor status in order to receive graduate medical education or training. [Act 212(e), 22 CFR 514.31(a)(1)]

4.9.1.1. *Government financing.* "Financed directly" is interpreted to mean that the Exchange Visitor is provided with funding from the U.S. Government or his home government for the purpose of his participation in an Exchange Visitor Program. "Financed indirectly" is interpreted to mean that the Exchange Visitor is "(1) financed by an international organization, with funds contributed by either the United States or the participant's government for use in financing such exchanges, or (2) financed by an organization or institution, with funds made available by either government for the specific purpose of furthering such international exchange." [22 CFR 514.1]

Thus, an Exchange Visitor is considered to be directly or indirectly financed by the U.S. or his home government *only* if the funds are made available to him for the *specific* purpose of his participating in an Exchange Visitor Program. For example, a student on a Fulbright travel grant is considered by ICA to be financed directly by the U.S. Government, since the travel grant was awarded to him for the purpose of participating in an international educational exchange program. Even though that financing is sometimes minimal, the Fulbright grantee is subject to the two-year home country residence requirement. On the other hand, a student on a research assistantship or grant, the funds for which were made available by the U.S. Government for another purpose, such as the accomplishment of a specific research goal, is not considered to be financed either directly or indirectly by the U.S. Government, for the funds were not provided specifically for the purpose of exchange, but for another purpose.

4.9.1.2. *Exchange Visitor Skills List.* The determination as to whether an Exchange Visitor is subject to the two-year home country residence requirement by virtue of the need for his specialized knowledge or skills in his home country is made by reference to the Exchange Visitor Skills List. This is an official list of individual countries and the specific fields of specialized knowledge and skills needed in each country. The Exchange Visitor is subject to the foreign residence requirement only if participation in the program began after the publication of the particular skills category. The Exchange Visitor Skills List was originally published in the *Federal Register* on April 25, 1972, and was revised in the *Federal Register* of February 10, 1978. Copies of the Exchange Visitor Skills List are available from the Exchange Visitor Programs Designation Staff, ICA.

4.9.1.3. *Foreign medical graduates.* All foreign medical graduates (see Section 4.11.1 for definition) who obtained Exchange Visitor status after January 9, 1977, and who came to the U.S. or acquired Exchange Visitor status for the purpose of obtaining graduate medical education or training (see Section 4.11.1 for definition) are subject to the two-year home country residence requirement. [Act 212(e), 22 CFR 514.31(a)(1)]

4.9.2. ***Waiver of the two-year home country residence requirement.*** The two-year home country residence requirement may be waived for any one of the following four reasons: [Act 212(e), 22 CFR 514.31]

4.9.2.1. *Exceptional hardship* to a U.S. citizen or permanent resident spouse or child of the Exchange Visitor which would be caused by the Exchange Visitor's departure from the U.S. and residence abroad. [22 CFR 514.31(b)] An application for a waiver on such grounds is filed by the Exchange Visitor on Form I-612 with the INS office having jurisdiction over his place of activity in the U.S. The term "exceptional hardship" is interpreted quite strictly. The Exchange Visitor must demonstrate that the U.S. citizen or permanent resident spouse or child will be unable to obtain necessary

medical treatment abroad for an illness, or that the spouse or child will be subject to persecution or discrimination abroad, or that some genuinely exceptional hardship to the spouse or child will result from the Exchange Visitor's residence abroad. If exceptional hardship is found by the INS, the application and supporting evidence is forwarded to the Waiver Review Branch, Office of the General Counsel, ICA, for a recommendation. If ICA recommends favorably, the INS may and normally will grant the waiver. If ICA recommends against the waiver, it will not be granted, for the Act requires a favorable recommendation by ICA if the waiver is to be granted.

4.9.2.2. *Persecution* because of race, religion, or political opinion if the Exchange Visitor is forced to return to his country of last residence or nationality. [22 CFR 514.31(b)] An application for waiver on these grounds is also filed on Form I-612 and is processed in the same manner as that for an exceptional hardship case. The Exchange Visitor must present substantial evidence of the probability of genuine persecution upon his return home. Hardship, lack of opportunity to advance in his profession, or similar prospective difficulties are usually not sufficient grounds for such a waiver. ICA will sometimes consult the U.S. embassy in the Exchange Visitor's home country for substantiation of the claim to persecution before making a recommendation to the Attorney General. A positive finding by INS initially as to persecution, a recommendation from ICA, and a subsequent INS determination that the alien's admission is in the public interest are required if the waiver is to be granted.

Note: The statute provides for the possibility of a waiver if the Exchange Visitor will be subject to persecution because of "race, religion, or political opinion." The regulations, at 22 CFR 514.31(b), expand that to persecution because of "race, religion, political opinion, nationality, or membership of a particular social group." The latter conforms to the definition of a refugee in the United Nations Convention and Protocol Relating to the Status of Refugees.

4.9.2.3. *Interest of a U.S. Government agency.* [22 CFR 514.31(c)] If an Exchange Visitor is engaged in a program of interest to a U.S. Government agency, the head of that agency or his designee may apply to the Waiver Review Branch, Office of the General Counsel, ICA, for a waiver of the two-year home country residence requirement on the grounds that the granting of the waiver would be in the public interest and that the Exchange Visitor's absence from the U.S. would be clearly detrimental to a program or activity of interest to that agency. In such cases, the application is made by the government agency which desires the services of the Exchange Visitor, and not by the Exchange Visitor himself. The waiver can be granted by INS on the recommendation of ICA. Such waivers are granted only in the interest of the agency involved, not in the interest of the Exchange Visitor. See Appendix 7 for a list of U.S. Government agencies that can apply for a waiver on these grounds.

Advisers should note that the Department of Health and Human Services or the Department of Education may serve as the interested government agency for an alien whose potential scientific, educational, or cultural contributions to the U.S. might be such that it would be in the public interest to grant a waiver. The Waiver Review Boards of these two departments do not recommend waivers frequently, but institutions may find it useful to refer waiver cases to them when the alien involved is not directly employed in a U.S. Government program but is important enough that his presence could be judged to be in the national interest. The Department of Health and Human Services would be concerned with aliens who are in the health, biomedical, or welfare fields; the Department of Education would be concerned with those in general educational fields. An example might be a distinguished professor of economics employed as a faculty member at a U.S. university.

4.9.2.4. *Statement of no objection by home country.* [22 CFR 514.31(c)] A waiver may also be granted if the home country of the Exchange Visitor provides a statement of no objection to the Exchange Visitor's remaining in the U.S. and ICA agrees that a waiver is justified. The home country's statement must be sent to the Director of ICA "through official channels, i.e., from the country's foreign office to the Agency through the U.S. mission in the foreign country concerned, or through the country's head of mission or duly appointed designee to the Director in the form of a diplomatic note." [22 CFR 514.31(c)(2)] A statement of no objection will be most effective if it explains the circumstances of the particular case and does not appear to be a perfunctory statement.

In addition to the statement of no objection from the home country, the Exchange Visitor must provide the following information to the Waiver Review Branch, Office of the General Counsel, ICA: full name; place and date of birth; present address in the U.S. or last address in the U.S. prior to departure; list of Exchange Visitor programs in which the person participated; Alien Registration Number, if known; name of the foreign government official with whom the case can be discussed if necessary; specific reasons for not wishing to fulfill the two-year home country residence requirement; and the views of each of the Exchange Visitor's sponsors concerning the waiver application. Upon receipt of a statement of no objection for a particular Exchange Visitor, ICA will send the Exchange Visitor a "data sheet" on which all of this information is requested.

Exchange Visitors who have received U.S. Government funding are seldom granted waivers on the basis of a statement of no objection. ICA usually takes the

position that U.S. Government funding requires the return home of the Exchange Visitor in order to fulfill the goals of the program which funded the Exchange Visitor.

A foreign medical graduate who came to the U.S. or acquired Exchange Visitor status on or after January 10, 1977, for the purpose of obtaining graduate medical education or training is not eligible to apply for a waiver of the two-year home country residence requirement on the basis of a no objection statement issued by his country of nationality or last residence. [Act 212(e), 22 CFR 514.13(a)(8)(i)]

4.10 Change of Status

4.10.1. ***Change to Exchange Visitor status.*** [8 CFR 248] An alien holding a nonimmigrant status other than C, D, or K (transit, crewman, or fiance) may apply to the INS for change to Exchange Visitor status if he is accepted by an Exchange Visitor sponsor to participate in an Exchange Visitor Program. To apply for change of status, the alien submits to the INS office having jurisdiction over the intended place of activity a properly completed Form IAP-66, his Form I-94, and Form I-506 (Application for Change of Nonimmigrant Status) with the required fee (see Fee Schedule in Appendix 1). The alien must be in good standing in his present status in order to be eligible to apply for a change of status; if his stay has expired or if he has otherwise violated his status, he is not eligible, although in some cases INS may still grant the change if the violation was not a serious one. The action taken by INS will be indicated on the reverse of Form I-94, which will be returned to the alien. If the change of status is approved, the pink copy of Form IAP-66 will also be noted accordingly and returned.

In any application for change of status, the alien must be able to explain satisfactorily why he did not originally enter the U.S. in the status applied for. A change of circumstances or intention must be demonstrated to make the application valid. INS will not change an F-1 student to Exchange Visitor status if it is apparent that the reason for the change is solely or principally to enable the dependents to apply for permission to accept employment.

4.10.2. ***Change from Exchange Visitor status to another nonimmigrant status.*** [8 CFR 248] An Exchange Visitor is severely limited in his eligibility to change to another nonimmigrant status. He is eligible to change from Exchange Visitor to A (diplomatic or government official) or to G (international organization) status if he is accredited by the foreign government or international organization to the Department of State. If he is not subject to the two-year foreign residence requirement or has had that requirement waived, he is eligible to apply for change of status to H (temporary worker or trainee) or L (intracompany transferee) status if otherwise qualified. A change to any other nonimmigrant classification is *not permitted*. [Act, 248; 8 CFR 248.2]

However, an alien outside the U.S. who had been in the U.S. as an Exchange Visitor may apply for a different nonimmigrant visa at a U.S. embassy or consulate. Authority to grant such a visa lies fully within the discretionary power of the consular officer. No minimum time abroad is required to obtain a different visa unless the former Exchange Visitor is subject to the two-year home country residence requirement, in which case he must satisfy that requirement or have it waived before he is eligible for an H or L visa. Returning to the U.S. in another status does not absolve the alien from a previously incurred two-year home country residence requirement.

An Exchange Visitor who is eligible to apply for change of status does so by submitting to INS his Form I-94, Form I-506 (Application for Change of Nonimmigrant Status), the required fee (see Fee Schedule in Appendix 1), and such other documentation as is specified on Form I-506 to demonstrate his eligibility for the new status. No fee is required if the Exchange Visitor is changing to A or G classification. [8 CFR 248.3]

INS and ICA generally do not look favorably on a request by a J-1 Exchange Visitor to change to J-2 dependent status (see Section 4.13), since the J-1 Exchange Visitor is expected to return to his home immediately upon completing his program in the U.S. Such requests are usually either immediately denied or referred to ICA for its views. An alien who wishes to request such a change of status should submit to INS his Form I-94, the Form I-94 and pink copy of Form IAP-66 of the principal J-1 alien whose dependent he will be, information about passport validity, and a letter explaining the reasons for the requested change and justifying the extended period of stay in the U.S. No application on Form I-506 or fee is required. Such applications will nearly always be denied. For change from J-2 to J-1, see Section 4.13.8. [INS Operations Instructions 248.5]

4.10.3. ***Adjustment of status to permanent resident.*** An Exchange Visitor may adjust his status to that of a permanent resident only if he is not subject to the two-year home country residence requirement (or if that requirement has been waived) and he otherwise meets the requirements of Section 245 of the Act. Qualifications and procedures for such an adjustment of status are described in Section 7.

It is interesting to note that an Exchange Visitor who is not subject to the two-year home country residence requirement, or for whom that requirement has been waived, may apply for *adjustment* of status to that of a permanent resident, whereas *no* Exchange Visitor may apply for *change of status* to another nonimmigrant classification other than A, G, H, or L. This anomaly is caused by the fact that Congress, in passing Public Law 91-225, amended Section 212(e) of the Act regarding the attainment of permanent resident, H, and L status, but neglected to amend similarly section 248

of the Act regarding other changes of nonimmigrant status. Legislation was introduced in 1980 and again in 1981 to allow changes of status to Exchange Visitors who are not subject to the two-year home country residence requirement (the Administration's "efficiency package"), but Congress did not act on that proposed legislation.

4.11 Special Factors Governing Participants in Medical Fields

Program sponsors and participants must be aware of special regulations which govern the participation in Exchange Visitor Programs of foreign medical graduates (FMGs) and specialists in allied medical fields. Sponsors must be particularly aware of the distinctions made among programs designated P-1, P-2, and P-3 for medical participants.

4.11.1. ***Foreign medical graduates.*** Sweeping changes in regulations concerning FMGs were brought about by passage of the Health Professions Educational Assistance Act of 1976 (PL 94-484) and its amendments of August 1977 (PL 95-83), and to a lesser extent by passage of the Immigration and Nationality Act Amendments of 1976 (PL 94-571).

Exchange Visitor foreign medical graduates who come to the U.S. to receive graduate medical education or training are now subject to stricter examination requirements before entering the U.S., to shorter time limitations on the length of the training permitted, and to the imposition of the two-year home country residence requirement.

Foreign medical graduates (or "graduates of a medical school," as used in the Act) are defined as "aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine." [Act 101(a)(41)] This rather ambiguous definition is intended to include aliens who have graduated from a medical school in a foreign country or who have otherwise earned in a foreign country their qualifications to practice medicine, but to exclude aliens of national or international renown in the field of medicine even if they have had their medical educations outside the U.S. The Departments of State and Justice have not defined what constitutes international renown in the field of medicine, adding to the ambiguity of the definition of a foreign medical graduate.

The term "graduate medical education or training" is defined to mean "participation in a program in which the alien physician will receive graduate medical education or training, which generally consists of a residency or fellowship program involving health care services to patients, but does not include participation in a program involving observation, consultation, teaching or research in which there is no element or only incidental elements of patient care." [22 CFR 514.1]

4.11.2. ***P-1 programs.*** P-1 programs sponsored by academic institutions are designed to provide participants with opportunities of an *academic* nature: courses of study, teaching, lecturing, and research. A U.S. university or medical center which has a designated Exchange Visitor Program may bring a foreign medical doctor to the U.S. on a P-1 program for the purpose of observation, consultation, teaching, or research activities. If the research or teaching involves any patient contact, a statement signed by the dean of the medical school concerned must be attached to the Certificate of Eligibility, Form IAP-66, before it is issued to the alien doctor. (See Section 4.11.10.)

If the primary purpose of the Exchange Visitor's participation in a program is of a clinical nature, the Exchange Visitor may not be documented under a P-1 program. In such cases, the alien doctor must be documented under the P-3-4510 program of the Educational Commission for Foreign Medical Graduates. (See Section 4.11.4.)

4.11.3. ***P-2 programs.*** P-2 programs sponsored by hospitals and related institutions are designed to provide participants (other than medical doctors entering internships, residencies, and specialized clinical training, as described in Section 4.11.4) with opportunities for clinical training in graduate nursing, nurse anesthesiology, medical technology, radiologic technology, and similar fields. Except for nurses in fields other than nurse anesthesia training, Exchange Visitor clinical trainees on P-2 programs may be sponsored for a period of practical training of up to 18 months after completing clinical training. However, the combination of clinical training and practical training may not exceed a total of three years.

Any application to transfer from a P-1 to a P-2 program or vice versa is generally considered as a change of program objective. Such an application will be approved only in very unusual circumstances (see Sections 4.6.2 and 4.7.2).

4.11.4. ***P-3-4510 program for foreign medical graduates sponsored by the Educational Commission for Foreign Medical Graduates.*** Clinical training for foreign medical graduates who are interns, residents, or who hold other clinical positions involving patient contact is authorized only under the P-3-4510 program sponsored by the Educational Commission for Foreign Medical Graduates (ECFMG).

Effective June 1, 1972, the Department of State designated the ECFMG as the sole agency authorized to sponsor FMGs for internship, residency, and specialized clinical training. The ECFMG has exclusive authority under its program P-3-4510 to sponsor FMGs in clinical training and in other positions involving more than incidental patient care.

To defray the administrative costs of sponsorship, the ECFMG charges an annual fee directly to the FMG for services which it renders. These services include

the processing of Form IAP-66, counseling, verifying ECFMG certification, reviewing requests for extension of stay, and similar matters.

The ECFMG does not encourage transfer to its program from P-1 programs, as such transfers are generally considered to entail a change in program objective. However, each request for a transfer is judged on its own merits.

Inquiries concerning eligibility for ECFMG sponsorship should be submitted to the Director, Division of Special Programs, ECFMG, 3624 Market St., Philadelphia, PA 19104, telephone (215) 386-5900.

4.11.5. ***Requirements for participating in graduate medical education or training programs.*** All FMGs (i.e., all aliens who have received their medical degrees or qualifications abroad) who come to the U.S. or acquire Exchange Visitor status for the purpose of receiving graduate medical education or training except those specifically exempted (see Section 4.11.9) must pass Parts I and II of the National Board of Medical Examiners Examination or an equivalent examination as determined by the Secretary of Health and Human Services. [Act 212(j)] Since only graduates of U.S. and Canadian medical schools can take the NBME examination, graduates of all other medical schools must take and pass the Visa Qualifying Examination (VQE), which has been determined by the Secretary of Health and Human Services to be the equivalent of the NBME examination. Successful completion of an ECFMG English language proficiency test is a prerequisite to taking the VQE. Other requirements to be met before an FMG can be accepted for a program of internship, residency, or clinical training are outlined in A through D below. [Act 212(j) and 22 CFR 514.13(a)(3)]

A. The medical school or institution is required to submit a written agreement that it will provide or arrange for the graduate medical education or training for which the alien is coming to the U.S.

B. The school or institution must have been satisfied that the alien has passed Parts I and II of the NBME Examination (or the VQE) and has competency in written and oral English before making an agreement to provide for this training. The alien is also expected to be able to adapt to the educational and cultural environment in which he will be receiving his education or training, and to have adequate prior education and training to participate satisfactorily in the program for which he is coming to the U.S.

C. The alien is required to have made a commitment to return to his home country upon completion of the training in the U.S., and the government of that country must provide written assurance that there is a need in that country for the skills the alien will acquire during this training.

D. Participation in the graduate program in the U.S. will be limited to two years with a possible extension for a third year if it is requested by the government of the alien's home country.

All foreign medical graduates in these programs who began their programs on or after January 10, 1977, are subject to the two-year home country residence requirement. A foreign medical graduate who has undertaken graduate medical education or training is not eligible to apply for a waiver of the two-year home country residence requirement on the basis of a "no objection" statement issued by his home government.

Public Law 94-484 provided a savings clause to the effect that if an accredited program of graduate medical education or training would experience substantial disruption in the health services it provided between January 10, 1978, and December 31, 1980 (extended to December 31, 1981, by PL 96-538), a foreign medical graduate could be exempted from requirements A and B on a case-by-case basis. Those exempted are subject to all other requirements.

Requirements A through D above do not affect FMGs pursuing training programs in the U.S. if they entered the U.S. for participation in these programs prior to January 10, 1977. Since December 31, 1980, however, these requirements apply to all FMGs in training programs regardless of when they entered the U.S.

4.11.6. ***Visa Qualifying Examination.*** The Department of Health and Human Services, working with the National Board of Medical Examiners and the ECFMG, has determined that the Visa Qualifying Examination (VQE) is an acceptable equivalent to Parts I and II of the NBME Examination. This examination is given once a year in a limited number of centers throughout the world. The ECFMG publishes a booklet giving detailed information on the VQE. This booklet can be obtained from the commission in Philadelphia (see Section 4.11.4).

4.11.7. ***The ECFMG examination.*** The ECFMG examination, which was used for some years before the VQE was developed, and which has been administered by the ECFMG, continues to exist. Those foreign medical doctors who are exempted from having to take the VQE may need to take the ECFMG examination in order to qualify for state licensure.

4.11.8. ***ECFMG certification.*** Passing the VQE and obtaining ECFMG certification are requirements that must be satisfied by FMGs who wish to enter the U.S. for advanced clinical training or for medical practice. ECFMG certification is a prerequisite for licensure in most states. To be certified by the ECFMG the alien doctor must (a) pass an ECFMG examination and (b) successfully complete the educational and other requirements stipulated in the commission's information booklet. Further information on these requirements can be obtained from the commission in Philadelphia (see Section 4.11.4).

4.11.9. ***VQE exemptions.*** Exchange Visitor FMGs who fall into one of the following categories are not required to take the VQE.

1. Those aliens who were on January 9, 1977, doctors of medicine fully and permanently licensed to practice medicine in a state, *and* who held on that date a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties, *and* who were practicing medicine in a state. (The term "state" means any state in the U.S. plus the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, as defined in Section 101(a)(36) of the Act.) Such alien doctors are considered to have passed the NBME examinations. [PL 95-83, Section 602, technical note to Act 212 (a)(32), and 22 CFR 514.13(a)(3)(vii)]

2. Alien doctors who graduated from a school of medicine which is accredited by the Liaison Committee on Medical Education, a body approved for this purpose by the Commissioner of Education, regardless of whether the medical school is in the U.S. In effect, this means aliens of any nationality who have graduated from a U.S. or Canadian medical school or from the medical college of the American University of Beirut. [Act 212(a)(32) and 22 CFR 514.13(a)(3)(vi)]

3. Alien doctors who are considered to be of "national or international renown in the field of medicine." Such doctors are not considered as FMGs or as "graduates of a medical school" as defined in the Act, and would not normally be coming to the U.S. to undertake graduate medical education or training. [Act 101(a)(41)]

4. FMGs who are under the sponsorship of universities or medical centers on P-1 programs for the purpose of observation, consulting, teaching, or research involving no patient contact or only incidental patient contact (see Section 4.11.10). These persons are not considered to be coming to the U.S. for the purpose of obtaining graduate medical education or training. [22 CFR 514.1]

4.11.10. ***Academic teaching, research, consulting, or observation.*** Foreign medical doctors who come to the U.S. for the purpose of teaching, research, consulting, or observation, and who will have no patient contact or only incidental patient contact, are not subject to all of the requirements and conditions imposed on those FMGs who are here for the purpose of receiving graduate medical education or training. They are not required to pass the VQE or NBME examinations. [22 CFR 514.1, 514.13(a)(7)] However, if state licensure is required in order to work in a clinical department, the alien doctor would usually have to pass the ECFMG examination.

If no patient contact is involved in the FMG's duties, the Responsible Officer or alternate must append to the Form IAP-66 issued for the program a signed certificate which states "this certifies that the program in which (name of physician) is to be engaged is solely for the purpose of observation, consultation, teaching, or research and that no element of patient care services is involved." [22 CFR 514.13(a)(7)(i)]

If incidental patient care is involved in the FMG's duties, the dean of the medical school or his designee must append to the Form IAP-66 a signed statement certifying the following five points: [22 CFR 514.13(a)(7)(ii)]

A. The program is predominantly involved with observation, consultation, teaching, or research;

B. Any incidental patient contact will be under the direct supervision of a U.S. licensed medical faculty member;

C. The FMG will not be given final responsibility and decision-making on diagnosis and treatment of patients;

D. Any activities of the FMG will conform with state regulations or licensing requirements for medical and health care professions in the state in which the FMG is pursuing the program; and

E. Any experience gained in this program will not be creditable toward any clinical requirements for medical specialty board certification.

4.11.11. ***Public health and preventive medicine programs.*** Alien physicians who come to the U.S. for the purpose of participating in public health or preventive medicine programs sponsored by universities, medical centers, schools of public health, or other public health institutions are not required to pass the NBME examination or the VQE if their duties will not involve any patient care. In such cases, the Responsible Officer or alternate must append to Form IAP-66 a certificate which states: "This certifies that the program in which (name of physician) is to be engaged does not include any clinical activities involving direct patient care." [22 CFR 514.13(a)(6)]

4.12 Departure or Termination of Program

4.12.1. ***Responsibilities of sponsor.*** The program sponsor is required to report to the INS office having jurisdiction over the Exchange Visitor's place of temporary residence when (a) the sponsor terminates an alien's participation in an Exchange Visitor Program; or (b) a participant remains in the U.S. beyond the time authorized by the INS; or (c) a participant has ceased to maintain Exchange Visitor status (see Section 4.4); or (d) a participant has completed the activity for which he entered the U.S. and is due to depart. [22 CFR 514.12(a) and 514.14(g)] No form is provided for such reports to INS. The Responsible Officer should make the reports in writing, either by providing lists of terminating Exchange Visitors to INS periodically, or by devising his own form for this purpose, or by some other means he finds effective. When an Exchange Visitor has failed to maintain status or is being terminated by the sponsor for some reason other than completion of his objective, the report should explain the

circumstances of the case, the manner in which the Exchange Visitor has failed to maintain status, or the reason for termination.

4.12.2. ***Responsibilities of participant.*** When the Exchange Visitor departs from the U.S. after completing his program, he is required to surrender his Form I-94, thus reporting to INS his departure from the U.S. If he is departing from the U.S. to Mexico over a land border, he surrenders his Form I-94 to a U.S. immigration inspector. If he is departing to Canada over a land border, he surrenders Form I-94 to a Canadian immigration inspector. In all other cases, he surrenders Form I-94 to a representative of the airline or transportation company which provides transit out of the U.S.

4.12.3. ***Tax clearance or Sailing Permit.*** All Exchange Visitors are required to obtain a tax clearance or Sailing Permit before departing from the U.S., although this is a requirement which is seldom enforced at the port of exit. For further information regarding tax liability and Sailing Permits, see Internal Revenue Service publications 518, *Foreign Scholars and Educational and Cultural Exchange Visitors,* and 519, *U.S. Tax Guide for Aliens.*

4.13 Exchange Visitor Dependents (J-2)

The spouse and unmarried minor children of a J-1 Exchange Visitor who accompany the principal participant to the U.S. or follow to join him here are designated as being in J-2 status.

4.13.1. ***Eligibility requirements.*** Only the spouse and unmarried minor children of the J-1 Exchange Visitor are eligible for J-2 status. Other family members, such as parents, brothers, and sisters, are not eligible [22 CFR 514.1]

4.13.2. ***Issuance of Form IAP-66.*** If the J-2 dependents are to accompany the J-1 Exchange Visitor to the U.S., they may obtain their visas and admission to the U.S. along with the principal participant on the basis of the Form IAP-66 issued to the principal Exchange Visitor. If the dependents follow the J-1 Exchange Visitor to the U.S., they must obtain from the Responsible Officer another Form IAP-66 issued in the name of the principal participant. This duplicate Form IAP-66 must be an exact copy of the original form except that it should be checked to "permit visitor's immediate family to enter U.S. separately" in the box in the upper right-hand corner. The expiration date on the Exchange Visitor's Form I-94 should be indicated in item 3 and the current date of issue in item 7.

Exchange Visitor Program Designation Staff instructions to Responsible Officers (*Codes for Educational and Cultural Exchange*) state that applicants for J-2 visas or entry must also be provided a written statement on the program sponsor's letterhead giving the names, dates and places of birth, relationships, and nationalities of each of the family members. The supplying of such family information indicates approval by the program sponsor of the family members coming to the U.S. in J-2 status. However, consular officers in practice often issue J-2 visas and immigration officers admit family members to the U.S. in J-2 status without such a statement. Therefore, Responsible Officers are limited in the degree of control they have over whether family members may accompany Exchange Visitors to the U.S. Program sponsors can effectively control whether family members follow to join the principal participant, as a duplicate Form IAP-66 must be issued for that purpose.

The element of control is important, for program sponsors should take the responsibility of verifying the source and amount of financial support for dependents. Participants should be discouraged from bringing dependents to the U.S. if adequate funding for them is not available. The Responsible Officer should issue the statement referred to above and/or a duplicate Form IAP-66 for family members only after he has determined that financing for the family is adequate. This control is not quite as crucial in the case of J-2 dependents as it is in the case of F-2 dependents, as J-2 dependents may be able to obtain permission for employment (see Section 4.13.4). However, such permission is not granted routinely, and jobs are often not available. Financial planning should, therefore, not be based on the expectation of employment.

4.13.3. ***Obtaining a J-2 visa and entering the U.S.*** Dependents who will accompany the principal Exchange Visitor to the U.S. obtain their J-2 visas and enter the U.S. in J-2 status along with the J-1 Exchange Visitor on the basis of the single original Form IAP-66 and the written statement of their identities issued by the program sponsor. Dependents who will follow to join the principal participant in the U.S. must present the duplicate Form IAP-66 referred to above and the statement of identity issued by the program sponsor to the appropriate U.S. consular officer to apply for J-2 visas. All three copies of the Form IAP-66 are returned by the consular officer to the J-2 applicant, who then presents the Form IAP-66 to the immigration inspector at the port of entry to the U.S. Upon entry to the U.S., each dependent is issued a Form I-94 (Arrival-Departure Record), indicating the date of entry, classification, and authorized period of stay, which will be the same as that of the principal J-1 Exchange Visitor as indicated in item 3 of the Form IAP-66.

Nationals of certain countries who are exempt from passport and visa requirements (see Sections 2.2.4 and 2.3.2) may bypass the visa application process and apply for admission at a U.S. port of entry with only the duplicate Form IAP-66 and statement of identity provided by the program sponsor.

4.13.4. ***Employment of J-2 dependents.*** J-2 dependents may apply to the district office of INS having jurisdic-

tion over their place of temporary residence for permission to accept employment if such employment is needed for the support of the dependents and *not* for the support of the principal participant. INS regulations provide that such application need not be made in writing. However, it is usually made in the form of a letter stating the need for employment, indicating the source and amount of support for the principal participant, the total income and expenditures for the family, and specifically stating that the income derived from employment will be used only for the support of the dependents, and not for that of the J-1 Exchange Visitor. The statement of family expenses may include customary recreational and cultural activities and related travel. The Forms I-94 of the principal participant and the dependent(s) applying for work permission should be submitted with the letter of application. Action taken by INS on the application will be noted on the dependent's Form I-94, which will be returned to the applicant. If permission for employment is granted, it is valid for any kind of employment without limitation as to full time or part time. (An exception is a medical doctor in J-2 status, who, in order to be employed as an intern or resident, would have to qualify as specified in Sections 4.11.4 through 4.11.9.) Work permission for a J-2 dependent expires at the same time as the authorized stay. [8 CFR 214.2(j)(1)]

Whereas Social Security taxes are not deducted from the earnings of a J-1 Exchange Visitor who is authorized to work, they *are* deducted from the earnings of a J-2 dependent, as the services were not performed "to carry out a purpose for which the individual was admitted," as required by the Mutual Educational and Cultural Exchange Act of 1961 for exclusion from Social Security coverage. Therefore, J-2 dependents are subject to Social Security taxes, federal income taxes, and, where applicable, state income taxes. See IRS publication 519, *United States Tax Guide for Aliens*.

4.13.5. ***Extension of stay.*** Extensions of stay may be granted to J-2 dependents for the same period of time allowed the principal J-1 participant and are adjudicated at the same time as that of the J-1 participant. The J-1 participant makes his application for extension of stay in the usual manner (see Section 4.6), submitting Form IAP-66 to the INS district office having jurisdiction over the place of temporary residence. He attaches to the Form IAP-66 the Forms I-94 of the dependent J-2 family members and a statement on the program sponsor's letterhead indicating the following information about each dependent: name, relationship to the Exchange Visitor, nationality, place and date of birth, passport number, passport expiration date, and passport issuing country. INS action on the application for extension of stay will be noted on the Forms I-94 of the dependents. [22 CFR 514.22(b)(2)]

If application for extension of stay of J-2 dependents is not made at the same time as that of the J-1 participant, regulations prescribe that the program sponsor must complete a new Form IAP-66 and indicate in item 3 the date to which the principal Exchange Visitor's stay is valid. The new Form IAP-66, the statement of information about each dependent, and the dependents' Forms I-94 should then be submitted to the INS office having jurisdiction over the place of temporary residence of the Exchange Visitor. [22 CFR 514.22(b)(4)] In practice, INS will frequently extend the stay of J-2 dependents on the basis of the J-1 alien's Form I-94 and will not require a new Form IAP-66.

Although it is not specifically stated in the regulations, INS considers a work permit granted to a J-2 dependent to expire at the same time as the authorized stay. Therefore, a J-2 dependent who has authorization for employment and who wishes to continue employment must apply for extension of the work permit at the same time he applies for extension of stay. Application is made in the same manner as the original application (see Section 4.13.4).

4.13.6. ***Visits abroad and reentry.*** If a J-2 dependent wishes to travel outside the U.S. for a temporary visit and to reenter the country, he follows basically the same procedures as a J-1 principal participant. He must be certain that he has the proper documents to enter the country he visits and to reenter the U.S. As in the case of the J-1 Exchange Visitor, the dependent must have a valid passport and visa (unless exempt from passport and visa requirements, see Sections 2.2.4 and 2.3.2) and a current third (pink) copy of Form IAP-66 to reenter the U.S. The same regulations and procedures for automatic revalidation of visas apply to the J-2 dependent as to the J-1 principal participant. The dependent may travel outside the U.S. and return either with the J-1 Exchange Visitor or separately.

A special situation arises when the principal J-1 participant travels outside the U.S. leaving his J-2 dependent in the U.S. Since the dependent's stay in the U.S. is valid only while the J-1 participant maintains status here, it is not legitimate for the dependent to remain in the U.S. while the J-1 Exchange Visitor is absent from the country for any significant period of time.

4.13.7. ***Two-year home country residence requirement.*** The J-2 dependent is subject to the two-year home country residence requirement if the J-1 principal participant is subject to that requirement. In addition, the J-2 dependent may be subject to that requirement independently of the principal participant if the dependent is a national of a country in which his particular specialized knowledge or skills are needed and is, therefore, independently subject to the Exchange Visitor Skills List.

In some cases of this nature, the J-2 dependent may be able to apply for a waiver of the two-year home country residence requirement on the basis of any of the four grounds stated in 4.9.2. ICA may be willing, in some cases, to serve as the interested government

agency if the waiver application is based on the national interest.

4.13.8. ***Change of status.*** An alien holding a nonimmigrant classification other than C, D, or K may change to J-2 status if the spouse changes from another nonimmigrant classification to J-1 or if he becomes the spouse of an alien in J-1 status. In the first instance, the change is made automatically along with the principal participant by including the spouse or dependent's Form I-94 in the application for change to J-1 status. In the case of marriage to a J-1 alien, the spouse may apply for change to J-2 status by submitting to the INS district office having jurisdiction over the temporary place of residence the Forms I-94 of both the principal participant and the dependent(s), a completed Form I-506 (Application for Change of Nonimmigrant Status), and the required fee (see Fee Schedule in Appendix 1). Action taken by INS will be noted on the dependent's Form I-94, which will be returned by INS.

As in the case of the J-1 Exchange Visitor, the J-2 dependent may change from J-2 status to the following other nonimmigrant classifications: J-1, A, G; and, if he is not subject to the two-year home country residence requirement, to H or L status. Procedures are the same as for a J-1 Exchange Visitor (see Section 4.10.2). A J-2 dependent is prohibited from changing to any other nonimmigrant status. [8 CFR 248.2]

A J-2 dependent may wish to change to J-1 status in order to accept academic employment, or to remain in the U.S. following the departure of the J-1 principal to complete a program begun while in J-2 status, or for other reasons. To accomplish this change, the J-2 dependent should submit to INS a Form IAP-66 made out in his own name, his Form I-94, and information regarding passport validity. No fee or application form is required. If it appears to INS that the change from J-2 to J-1 will cause the applicant's stay to extend beyond that of the original J-1 principal, INS will also require a letter from the applicant stating (1) that he understands that the original J-1 principal will probably not be allowed to change to J-2 status and thereby extend his stay beyond its original duration to remain in the U.S. with the person who has changed from J-2 to J-1 (see Section 4.10.2), and (2) that he wants the change from J-2 to J-1 despite that understanding. The applicant can save much time by including such a letter with his application for change from J-2 to J-1 status. [INS Operations Instructions 248.5]

A J-2 dependent may adjust his status to that of a permanent resident only if he is not subject to the two-year home country residence requirement or has had that requirement waived and if he is otherwise qualified (see Section 4.10.3).

4.13.9. ***Departure or termination of program.*** A J-2 dependent's status terminates in the U.S. when that of the J-1 participant terminates (see Section 4.12). The dependent reports his departure from the U.S. in the same way as the J-1 participant by surrendering his Form I-94 at the time of departure. The program sponsor has no special responsibilities for reporting departure or termination of program for the J-2 dependent, but only for the J-1 participant. A J-2 dependent is required to obtain a tax clearance or Sailing Permit if he has been employed while in the U.S.

SECTION 5

TEMPORARY WORKER OR TRAINEE (H) STATUS

5.1 General Discussion

The H classification is used for temporary workers and trainees. There are four categories of H classifications, which are defined as follows [Act 101(a)(15)(H), 8 CFR 214.2(h), and 22 CFR 41.55]:

H-1—Alien of distinguished merit and ability to perform services of an exceptional nature requiring such merit and ability.

H-2—Alien "to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country." (One who is to perform duties which are themselves temporary in nature.)

H-3—Alien Trainee (One who seeks to enter the U.S. at the invitation of an individual organization, firm, or other trainer for the purpose of receiving training in any field of endeavor. Incidental production necessary to the training is permitted provided a U.S. worker is not thereby displaced.)

H-4—The spouse and unmarried minor children of an H principal alien, if they accompany or follow to join him.

5.2 Filing a Petition

A petition for H classification is filed on Form I-129B (see instructions on back of form) by the petitioner who is to provide employment or training to the alien beneficiary whose services the petitioner wishes to secure. The petition must be submitted in duplicate, together with supporting documents specified in the instructions on Form I-129B, to the district director of INS having administrative jurisdiction over the place in the U.S. in which the alien is to be employed or receive the training. The INS will notify the petitioner on Form I-171C (Notice of Approval of Nonimmigrant Visa Petition or of Extension of Stay of H or L Alien) upon approval of a visa petition filed on Form I-129B. INS also sends notification of the petition's approval to the U.S. consulate in the city (or border crossing point in the case of a Canadian) indicated by the petitioner on the Form I-129B. This enables the beneficiary, if he meets all other requirements, to obtain an H visa and/or entry in H status. The petitioner is considered by INS to be the employer, and it is usually expected that the alien will receive a salary or other compensation from the petitioner and not from any other employer in the U.S. If the alien is to be employed by more than one employer, it is usually required that separate petitions be submitted by each employer.

An H petition can take some time to process, and several months might elapse between the time the petition is submitted to INS and the date on which the alien receives the visa from a U.S. consulate.

Labor certification is not required for securing H-1 or H-3 classification. Application for labor certification is required for an H-2 visa.

5.3 H Status

5.3.1. ***H-1 temporary worker status.*** An H-1 temporary worker is defined as a person "who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability. . . ." [Act 101(a)(15)(H)(i)] H-1 status can be used to bring to the U.S. persons who will be temporary faculty members, researchers, consultants, or who will be engaged in a variety of professional level activities.

The term "distinguished merit and ability" is not quite as restrictive as it may initially appear. INS has determined that it is not necessary for a person to have advanced degrees or to be held in special renown or acclaim in order to qualify as a person of distinguished merit and ability for purposes of H-1 classification. Rather, a person who is a "member of the professions" is eligible for H-1 classification, and the term "profession" includes any vocation for which advanced knowledge, ordinarily reflected by a university degree of at least the baccalaureate level, is a realistic prerequisite to entry (*Matter of General Atomic Company*, Interim Decision—see *Interpreter Releases*, September 12, 1980). The Act defines the term "profession" to include but not be limited to "architects, engineers, lawyers, physicians, surgeons, and teachers in elemen-

tary or secondary schools, colleges, academies, or seminaries." [Act 101(a)(33)] Therefore, H-1 classification is appropriate for many kinds of visiting persons at the professional level.

A petition for H-1 classification should include documents which support the petitioner's contention that the alien is a member of the professions or otherwise meets the definition above. Such documents will usually include copies of any degrees or academic records, licenses to practice a profession, and/or affidavits or letters attesting to the alien's qualifications as a professional. The petition must show that the alien is coming to the U.S. for temporary employment, although the position the alien will occupy may be a continuing one.

5.3.1.1. *H-1 foreign medical graduates.* An alien physician educated outside the United States (a Foreign Medical Graduate or FMG) can be documented as an H-1 temporary worker only if he will be coming to the U.S. for the purpose of engaging in teaching or research. If he comes for the purpose of obtaining graduate medical education or training (for an internship or residency or similar purpose involving patient care—see Section 4.11.1), he must come as an Exchange Visitor under the P-3-4510 program of the Educational Commission for Foreign Medical Graduates, and he is not eligible for H-1 classification (see Section 4.11.4). If the FMG comes to the U.S. in H-1 status for the purpose of teaching or research, his employment must be with a public nonprofit private educational or research institution. If his teaching or research position involves incidental patient care responsibilities, state licensure will usually be required, and this may involve his passing the ECFMG examination or the Visa Qualifying Examination (see Sections 4.11.6 and 4.11.7). INS has determined that an alien graduate of a U.S. medical school may be accorded H-1 status for the purpose of providing patient care and treatment [CO 214h-P, July 9, 1979].

"Foreign medical graduates" (or "graduates of a medical school," the term used in the Act for this purpose) are defined as "aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine." [Act 101(a)(41)] This rather ambiguous definition is intended to encompass aliens who have graduated from a medical school in a foreign state or who have otherwise earned in a foreign state their qualifications to practice medicine. It excludes alien physicians who are of national or international renown, even if they obtained their medical educations outside the U.S.

5.3.1.2. *Medical doctors of national or international renown.* An alien medical doctor "of national or international renown" is not considered to be a foreign medical graduate, and therefore is not subject to any of the restrictions of the immigration law regarding entry to the U.S. for the purpose of graduate medical education or training or the practice of medicine. Therefore, presumably, medical doctors of national or international renown could be documented as H-1 temporary workers for the purpose of teaching, research, patient care, or any other position involving the practice of medicine. However, the Departments of State and Justice have not yet developed guidelines as to what constitutes a medical doctor of national or international renown, so at present it is not feasible to attempt to do this.

5.3.1.3. *H-1 medical interns and residents.* Alien medical doctors who have received their medical training and have graduated from a U.S. medical school are not considered to be foreign medical graduates. [Act 212(a)(32)] Therefore, INS has determined that such aliens may undertake internships and residencies in the U.S. while in H-1 status. [Memorandum dated July 9, 1979, from Charles McCarthy, Assistant Commissioner for Adjudications, INS Central Office]

5.3.2. ***H-2 temporary worker status.*** An H-2 temporary worker is a person "who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country. . ." [Act 101(a)(15)(H)(ii)] The petitioner must demonstrate that unemployed persons capable of performing the services cannot be found in this country, and that the alien is coming temporarily to perform services which are themselves temporary in nature. Although the petitioner may have a continuing need for services of technicians, for instance, an H-2 petition may be approved only where work is limited to special temporary activity. [8 CFR 214.2(h)(3)(i), (iii)]

An employer must attach to an H-2 petition either a temporary labor certification or a notice from the Department of Labor that the certification cannot be issued. In the latter case the employer must present countervailing evidence that qualified U.S. workers are not available. [8 CFR 214.2(h)(3)(i)]

The H-2 classification is not available to foreign medical graduates coming to the U.S. to perform services as members of the medical profession. [ACT (101)(a)(15)(H)(ii)]

5.3.3. ***H-3 trainee status***

5.3.3.1. *General.* An H-3 trainee is defined as a person "who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training. . ."[Act 101(a)(15)(H)(iii)] 22 CFR 41.55(c) further defines an H-3 trainee as "a nonimmigrant alien who seeks to enter the United States at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor, including agriculture, commerce, communication, finance, government, transportation, and the professions as well as in

a purely industrial establishment." [8 CFR 214.2(h); 22 CFR 41.55(c)]

A trainee may receive remuneration from an employer but only if the employment does not displace a U.S. resident. [8 CFR 214.2(h); 22 CFR 41.55(c)]

A petitioner must attach to each H-3 petition "a statement describing the kind of training to be given and setting forth the proportion of time that will be devoted to productive employment; the number of hours that will be spent respectively in classroom instruction, and in on-the-job training without supervision; the position or duties for which this training will prepare him; the reason why such training cannot be obtained in the alien's country, and why it is necessary for the alien to be trained in the U.S." [8 CFR 214.2(h)(4)(iii)]

Educational institutions might petition for H-3 status for aliens who wish to undertake training programs not covered under the terms of the institution's Exchange Visitor Program. Institutions which do not have an Exchange Visitor Program might also petition for H-3 classification for certain aliens.

5.3.3.2. *Nurses.* A petitioner may seek H-3 classification for a nurse who is not qualified for H-1 status, but who wishes to come to the U.S. for further training in nursing. "The petitioner shall attach to the petition evidence that the beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where he obtained his nursing education, or that such education was obtained in the United States or Canada; also, a statement from the petitioner certifying that to the best of the petitioner's information and belief the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training." [8 CFR 214.2(h)(4)(iv)]

5.3.3.3. *Foreign medical school student trainee.* "A U.S. hospital approved by the American Medical Association or the American Osteopathic Association for either an internship or residency program may petition to classify as a trainee a medical student attending a medical school if he will engage in employment as an extern during his medical school vacation." [8 CFR 214.2(h)(4)(ii)]

5.3.4. ***H-4 dependent status.*** The spouse and unmarried minor children of an H-1, H-2, or H-3 alien are accorded H-4 classification. Application for this classification may be included in the petition for the principal H alien. H-4 aliens may not be employed. [8 CFR 214.2(h)(1)]

5.4 H Status versus J Status

5.4.1. ***Differences between H-1 and J-1 status.*** Educational institutions interested in having the services of nonimmigrant aliens for professional teaching and research positions can assist such aliens to secure either H or J visas. Except in the case of foreign medical graduates, there seems to be little practical difference between the H and J classifications for employment purposes so far as educational institutions are concerned, although there is a basic difference of concept between the two so far as the Department of State, the International Communication Agency, and the INS are concerned. In their view, a distinction exists between the H alien who comes specifically to perform services and the J Exchange Visitor who comes as a participant in an Exchange Visitor Program that is designed to "promote interchange of persons, knowledge, and skills, and the interchange of developments in the field of education, the arts and sciences," in such a way as to promote "mutual understanding between the peoples of the United States and the people of other countries." [22 CFR 63.1] Since an Exchange Visitor Program may provide for an Exchange Visitors's participation as a professor, teacher, research scholar, or specialist in a regular full-time or part-time position, at whatever salary rate may be agreed upon, the distinction between the purposes of the two visa classifications tends to become blurred in practical application.

Neither H-1 status nor J-1 status requires labor certification. An H-1 visa usually takes more time, however, because petitioning for H-1 classification requires much more supporting documentation and much more processing time than is required for a J-1 visa. A fee (see Fee Schedule, Appendix 1) is required for an H petition and for extension of stay in H status. No fee is required for a J visa or for extension of stay in J status. Obtaining an H-1 visa usually takes more time because an H-1 petition must be approved by INS before an alien may apply for a visa. However, an alien may apply for a J-1 visa immediately upon receiving Form IAP-66 from the program sponsor.

Advantages of the H-1 status are: (1) it does not specify the maximum stay that may be permitted, whereas J-1 professors and researchers are limited to a maximum of three years. H-1 aliens, while still temporary, might be permitted to remain in the U.S. for up to five years or more; (2) an H-1 alien may apply for adjustment of status to permanent resident or for change of status to another nonimmigrant classification, whereas some J-1 aliens are prohibited from such changes because of the two-year home country residence requirement.

5.4.2. ***Differences between H-3 and J-1 trainees.*** H-3 and J-1 trainees appear to be very similar. The chief differences between them are: (1) H trainees may be allowed to remain in the U.S. longer than J trainees; (2) J visas may be obtained more easily and quickly than H visas; (3) the employer of a J trainee need not provide elaborate documentation concerning the training program, as is required of the employer of an H-3 trainee; and (4) a fee is required for an H-3 petition and for extension of stay in H status whereas no fee is

required for a J-1 visa or for extension of stay in J status.

Neither H-3 nor J-1 trainees require labor certification. Both types of trainees may receive remuneration for their services.

5.5 Extension of Stay

There is no specified maximum time that extension of stay may be authorized for an alien in H-1 or H-3 status. It is possible that an H-1 alien might be granted extensions that would total as much as five years or more. However, there is a specific limitation on the maximum time that may be granted to an H-2 alien. An alien so classified may not be granted an extension "which would result in an unbroken stay in the United States for more than three years." [8 CFR 214.2(h)(11)] Furthermore, any application by an H-2 alien for extension of stay must be accompanied by a labor certification "or a notice that such certification cannot be made." [8 CFR 214.2(h)(11)]

Application for extension of stay is made on Form I-539 (Application to Extend Time of Temporary Stay) to the office of INS having jurisdiction over the alien's temporary place of residence. The application should be accompanied by a fee (see Fee Schedule in Appendix 1) and a statement from the employer or trainer indicating that the alien is to continue under the same terms and conditions for which previous authorization was received. (For further instructions see Section 6.3.2.)

Application for extension of stay of dependents who are classified H-4 is included in the application of the principal H alien.

5.6 Visits Outside the U.S. and Reentry

The petitioner may furnish the Form I-171C (not a copy) on which INS action on the petition was originally noted, to a beneficiary of an H petition who desires to depart from and return to the U.S. to resume the same employment within the period for which the petition is valid. The INS may also issue an original Form I-171C, upon request, to an H alien who has received a temporary extension of stay and intends to depart from and return to the U.S. within the period for which his temporary stay has been authorized to resume the same employment. [8 CFR 214.2(h)(3a)]

When the alien is planning to visit temporarily outside the U.S., he should be certain that he has all necessary documents for entry into the country and that the H visa stamped in his passport is valid for reentry. If the visa needs to be revalidated, it will be necessary for the alien to present his passport and the Form I-171C to a U.S. consul outside the U.S., or to send his passport, Form I-94, and Form I-171C to the Visa Office in Washington for revalidation.

An H visa may be considered to be automatically revalidated upon application for reentry to the U.S. if the alien is returning from either Canada or Mexico after a visit there for a period of not more than 30 days, has a valid Form I-94, and is returning to the U.S. to resume his H status. [22 CFR 41.125(f)(2)]

5.7 Taxes

The employment of an H alien is not excluded from Social Security coverage and is therefore subject to Social Security employee tax (see Social Security Administration publication, "Social Security Coverage of Foreign Students and Exchange Visitors").

Income tax is paid on income derived from employment in H status, unless tax exemption is specifically provided by treaty or convention (see Internal Revenue Service publication 518, "Foreign Scholars and Educational and Cultural Exchange Visitors").

5.8 Sailing Permit

Departing aliens in H status are formally required to obtain a Sailing Permit (see Section 2.9).

SECTION 6

OTHER NONIMMIGRANT CLASSES

6.1 General Discussion

There are 12 general classes of nonimmigrants. One class has five subdivisions, and some classes include spouse and children who are accompanying or following to join the principal alien.

An applicant for a nonimmigrant visa is presumed to be an intending immigrant until he establishes to the satisfaction of the consular officer that he is entitled to a nonimmigrant visa according to the terms of Section 101(a)(15) of the Act or as otherwise established by law or treaty. The burden of proof is upon the applicant to establish that he is entitled to the nonimmigrant visa for which he is applying. [22 CFR 41.10]

There is no numerical limitation on the number of nonimmigrant visas that can be issued in a given year, as there is in the case of immigrant visas. Before a nonimmigrant visa is issued to an alien by a U.S. consul, or a change of nonimmigrant status is approved in the U.S. by an official of the Immigration and Naturalization Service (INS), the official must be satisfied that the alien is a *bona fide* nonimmigrant with a residence in his home country which he has no intention of abandoning (in most cases), and that the alien intends to enter the U.S., or change his status, solely for purposes consistent with the terms of the visa or nonimmigrant status for which he is applying.

Employment of a temporary nature is permitted under most nonimmigrant classifications, although it is severely restricted for some classes. "Temporary" may mean a relatively short period of time or it may mean a period of five years or more under certain restrictions. Those classes in which employment is not permitted are B-2, F-2, D, H-4, L-2, C-1, and transit without visa (TWOV.)

A brief description of the nonimmigrant classes that are not frequently encountered in academic institutions follows.

6.2 Nonimmigrant Classifications Less Commonly Encountered in Educational Institutions

6.2.1. ***A status (diplomats, other government officials, and related personnel)***

6.2.1.1. *A-1 status (diplomats and their immediate families).* An A-1 alien is defined as "an ambassador, public minister, or career diplomat or consular officer who has been accredited by a foreign government . . . and the members of (his) immediate family. . . ." [Act 101(a)(15)(A)(i)] Although A-1 aliens are admitted to the U.S. as officials of a foreign government, they may seek the opportunity, or may be offered the opportunity, to teach a course or lecture at an educational institution. Any employment of an educational or cultural nature outside the official business for which the A-1 alien was admitted is the concern of the alien's embassy and the Office of Protocol of the U.S. Department of State. Questions about such employment should be referred to that office.

Members of the immediate family residing with an A-1 diplomat may apply for permission for employment on Form I-566 to the Office of Protocol of the Department of State. The regulations prescribe strict limitations on the approval of such employment. [8 CFR 214.2(a)(2)] A-1 aliens may enroll in school full time or part time while maintaining their A-1 status.

6.2.1.2. *A-2 status (other government officials and their immediate families).* A-2 aliens are defined as "other officials and employees who have been accredited by a foreign government. . .and the members of their immediate families. . . ." [Act 101(a)(15)(A)(ii)]

The A-2 immediate family members who reside with a principal A-2 government official may apply for permission for employment under the same terms as those described above for A-1 family members. A-2 government officials and members of their immediate families may attend school full time or part time while maintaining their official A-2 status.

6.2.1.3. *A-3 status (attendant, servant, or personal employee of alien classified as A-1 or A-2, and their immediate families).* A-3 status is accorded "upon the basis of reciprocity" to "attendants, servants, personal employees, and members of their immediate families, of the officials and employees" who are in A-1 or A-2 status. [Act 101(a)(15)(A)(iii)] Aliens in A-3 status

are admitted to the United States for an initial period not exceeding one year, and may apply for annual extensions of stay thereafter. [8 CFR 214.2(a)(1)] A-3 aliens may attend school part time or full time.

6.2.2. ***B status (visitor).*** A B visa can be issued to "an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence abroad which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure." [Act 101(a)(15)(B)] A B visitor may be admitted to the U.S. for an initial period no longer than one year, and may be granted extensions of stay in increments no longer than six months each. [8 CFR 214.2(b)] The B classification is divided into two types, visitors for business (B-1) and visitors for pleasure (B-2). In addition, a B-1/B-2 visa is sometimes issued. These types are discussed separately here.

6.2.2.1. *B-1 status (visitor for business).* The term "business" as used in the definition above "refers to legitimate activities of a commercial or professional character. It does not include purely local employment or labor for hire. . . .An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature, requiring such merit and ability, but having no contract or other prearranged employment, may be classified as a. . .visitor for business." [22 CFR 41.25(b)] In its Visa Office *Foreign Affairs Manual*, which gives detailed instructions and guidelines to visa-issuing officers, the Department of State has elaborated upon the types of people who can be issued B-1 visas:

> —aliens coming to engage in commercial transactions which do not involve gainful employment in the U.S., to participate in scientific, educational, professional, or business conventions or conferences, or to undertake independent research;
> —an alien, other than an entertainer by profession, who would be classifiable as H-1 and who is coming to perform services, but who will receive no salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses incidental to his temporary stay;
> —an alien already employed abroad coming to undertake training who would be classifiable as H-3 but who will continue to receive a salary from the foreign employer and will receive no salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses incidental to his temporary stay.

It is possible for an educational institution to pay a subsistence allowance to a B-1 visitor who performs a temporary service, or to reimburse his expenses, or to pay him an honorarium that does not exceed his travel and living costs.

B-1 visitors cannot legally accept full-time, part-time, or temporary teaching or research positions or other employment for which they are paid by a U.S. institution. B-1 visitors who accept such positions violate the terms of their status and become subject to deportation.

6.2.2.2. *B-2 status (visitor for pleasure).* The term "pleasure" as used in Section 101(a)(15)(B) of the Act "refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives and rest; medical treatment, or activities of a fraternal, social, or service nature." [22 CFR 41.25(c)]

A B-2 visa can also be issued to a person who is coming to the U.S. to be a student if the person (1) has not yet selected a U.S. school to attend and wishes to enter the U.S. to visit various schools and choose one to which to seek admission, or (2) has been admitted to a U.S. school but intends to enter the U.S. more than 60 days in advance of the school's opening. In either of these two cases, the consular officer is supposed to write the words "prospective student" on the passport page that bears the B-2 visa. [*Foreign Affairs Manual*, Vol. 9] That notation on the visa page is conducive to favorable INS action on the alien's subsequent application to change from B-2 to F-1 status. Unfortunately, it is not uncommon for consular officers to neglect to mark the B-2 visas that are given to "prospective students," and in the absence of that notation the alien can experience difficulty in securing a change to student status once inside the U.S.

A B-2 visa can be issued to an alien who wishes to enter the U.S. to marry an alien already here in a nonimmigrant status.

People in B-2 status are not permitted to accept employment. Applicants for B-2 visas are normally expected to present the consul with evidence that they have financial support adequate for the contemplated stay in the U.S.

A Canadian who enters the U.S. and who is not issued a Form I-94 is considered to be in B (visitor for business or pleasure) status, with permission to remain in the U.S. for six months.

6.2.2.3. *B-1/B-2 status (visitor for business and pleasure).* An alien who plans to visit the U.S. for both business and pleasure may be granted a B-1/B-2 visa. An alien in B-1/B-2 status is entitled to receive reimbursement for travel and per diem.

6.2.3. ***C status (alien in transit).*** A C alien is defined as "an alien in immediate and continuous transit through the United States (C-1), or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries," under certain provisions of the U.N. Headquarters Agreement (C-2). An accredited official of a

foreign government in transit through the U.S. is given C-3 status. [Act 101(a)(15)(C), 22 CFR 41.30, 41.31, 41.32]

Some aliens in transit can be admitted to the U.S. without visas ("TWOV," transits without visas), under provisions that appear in 8 CFR 214.2(c)(1).

People in C-1 status can be admitted to the U.S. for periods no longer than 29 days. [8 CFR 214.2(c)(3)] They cannot obtain extensions of stay, permission to work, or changes to another nonimmigrant status except A or G.

6.2.4. ***D status (crewman).*** D status is accorded "an alien crewman serving. . .in any capacity required for normal operation and service on board a vessel. . .or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman. . . ." [Act 101(a)(15)(D)] The only employment permitted aliens in D status is that associated with their work as crewmen. They cannot change to another nonimmigrant status or obtain an extension of stay beyond the 29 days normally permitted to them. [8 CFR 214.2(d) and 8 CFR 252.1(f)].

6.2.5. ***E-1 and E-2 status (treaty trader, treaty investor, and dependents).*** An E visa is given to an alien who is "entitled to enter the United States under. . .a treaty of commerce and navigation between the United States and. . .[his country]. . .and. . .[his] spouse and children. . .: (i) solely to carry on. . .trade. . ., or (ii) solely to develop and direct the operations of an enterprise in which he has invested, or. . .is. . .in the process of investing, a substantial amount of capital." [Act 101 (a)(15)(E); 22 CFR 41.40 and 41.41]

Aliens with E visas can be admitted to the U.S. for periods not exceeding one year. They can apply for one-year extensions of stay on Form I-539 and Form I-126. [8 CFR 214.2(e)] While dependents in E-1 or E-2 status are not permitted to accept paid employment, the INS does not normally take action against them if they do work, as long as the principal on whom they are dependent maintains his status. Aliens in E status can attend school, part time or full time, while maintaining E status as their principal purpose of being in the U.S.

6.2.6. ***G status (representatives and employees of international organizations and related personnel).*** There are five types of G visas. G-1 status is accorded "a designated principal resident representative of a foreign government. . .which. . .is a member of an international organization. . . , accredited resident members of the staff of such representatives, and members of his or their immediate family." [Act 101(a)(15)(G)(i)]

"Other accredited representatives of. . .a foreign government to. . .international organizations, and members of their immediate families," qualify for G-2 visas. [Act 101(a)(G)(ii)]

G-3 status is accorded "an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized. . .by the United States, or that the government of which he is an accredited representative is not a member of [an] international organization, and the members of his immediate family." [Act 101(a)(15)(G)(iii)]

"Officers, or employees of such international organizations, and the members of their immediate families" are classifed as G-4 aliens. [Act 101(a)(15)(G)(iv)]

Finally, G-5 visas are accorded "attendants, servants, and personal employees of any [international organization] representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees." [Act 101(a)(15)(G)(v)]

An alien in G-5 status is admitted to the U.S. for a period not exceeding one year, and can apply for annual extensions of stay. Others in G status are admitted for the duration of their status as recognized affiliates of an international organization. [8 CFR 214.2(g)(1)]

Aliens in G status may attend school, full time or part time, while maintaining G status as their principal purpose of being in the U.S.

Dependents in G-4 status can apply for permission to work under procedures set forth in 8 CFR 214.2(g)(2). There are no explicit provisions concerning employment of dependents in G-1, G-2, or G-3 status.

6.2.7. ***I status (representatives of foreign information media and immediate family).*** An I visa is available, "on the basis of reciprocity," to "an alien who is a *bona fide* representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation," and his spouse and children. [Act 101(a)(15)(I)] Aliens in I status are admitted for a period not longer than one year and can apply for annual extensions. [8 CFR 214.2(i)] They can attend school full time or part time while maintaining I status as their principal purpose of being in the U.S. Family members in I status are not expected to accept employment, but it is not customary for INS to take action against them if they do, as long as the principal alien is maintaining status.

6.2.8. ***K status (fiances and fiancees of U.S. citizens).*** A K visa can be given "an alien who is the fiancee or fiance of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within 90 days after entry, and the minor children of such fiancee or fiance. . . ." [Act 101(a)(15)(K)]

To receive a K visa, the alien must be the beneficiary of an approved petition filed by a U.S. citizen on Form I-129F (Petition to Classify Status of Alien Fiance or Fiancee for Issuance of Nonimmigrant Visa). The Form I-129F is submitted to the INS district office having jurisdiction over the petitioner's place of residence. Approval of the petition is valid for four months. Upon entering the U.S., the K-1 alien has 90 days in which

to marry the U.S. citizen petitioner. [8 CFR 214.2(k)] After the marriage, the alien will presumably apply for adjustment of status to that of a permanent resident.

An alien in K status cannot receive an extension of stay or change to another nonimmigrant category. The INS grants permission to accept employment to an alien in K status upon his admission to the U.S.

6.2.9. ***L status (intracompany transferee and immediate family).*** An L alien is defined as "an alien who, immediately preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and [his] alien spouse and. . .children. . . ." [Act 101(a)(15)(L)]

L visas are granted on the basis of approved petitions filed with the INS by an employer in the U.S. These procedures, along with the regulations concerning the admission, extensions of stay, and employment authorization for aliens in L status are found in 8 CFR 214.2(1). Dependents in L status, holding L-2 status, are permitted to attend school, but not to work. An alien in L status may be admitted for the period of established need for his services, not to exceed three years. Extension of stay may be authorized in increments of not more than 12 months.

6.3 Extension of Stay in Nonimmigrant Status

6.3.1. ***General discussion.*** Most nonimmigrants (except those in A-1, A-2, G-1, G-2, G-3, and G-4 status) are admitted to the U.S. for a specified period of time. Should a nonimmigrant need to remain in the U.S. for a longer period of time in order to accomplish the purpose for which he entered, he needs to apply for an extension of stay. A person in C, D, or K status is not eligible for extension of stay. A nonimmigrant in another classification can apply for an extension between 15 and 60 days before the expiration date shown on the Form I-94.

6.3.2. ***Procedures for applying for extension of stay.*** Application for extension of stay in A-3, B, E, G-5, H, I, and L classification is made on Form I-539 (Application to Extend Time of Temporary Stay). The completed Form I-539 is submitted to the district INS office that has jurisdiction over the applicant's place of temporary residence, along with the required fee (see Fee Schedule, Appendix 1), the applicant's Form I-94, and the Forms I-94 of any dependents. No fee is required, however, for extensions of stay for aliens in A-3 or G-5 status. The applicant's passport (and those of any dependents included in the application) must be valid for at least six months beyond the expiration date of the extension requested, unless the alien is from a country with which the U.S. has a passport agreement (see Section 2.2.4), in which case extension until the passport expiration date can be sought.

6.3.3. ***Satisfactory departure.*** Should a nonimmigrant need "an additional period of less than thirty days beyond the previously authorized stay within which to effect departure, such time may be granted without the filing of a formal application," when the need for the brief extension is "because of conditions beyond [the alien's] control or other special circumstances." [8 CFR 214.1(c)] Request for an extension of this kind can be made in person or by means of a letter stating the reasons for the delay in departure and giving the final departure date. The alien's Form I-94 should accompany the letter. If the request is granted, the INS will usually mark the Form I-94 with the words "satisfactory departure," and the date by which the departure is expected to take place.

6.4 Reentry After Temporary Departure

An alien in any of the nonimmigrant classifications discussed in this chapter can depart from and reenter the U.S. if he holds a valid passport and visa. An expired visa can be considered automatically revalidated (and converted to a different classification if the alien has changed status in the U.S.) until the date of reentry (and thus a valid visa stamped in the passport is unnecessary) in the case of a nonimmigrant who (1) has maintained his nonimmigrant status while in the U.S. and has a Form I-94 with an expiration date that is in the future; (2) is seeking to reenter the U.S. after an absence not exceeding 30 days in Canada or Mexico; (3) plans to resume the same nonimmigrant status in the U.S. within the authorized period of initial admission or extension of stay; (4) has a valid passport; and (5) does not need authorization of his admission under Section 212(d)(3) of the Act. [22 CFR 41.125(f)(2)]

6.5 Revalidation of Nonimmigrant Visa in the U.S.

The Visa Office of the Department of State has discretionary authority to revalidate certain nonimmigrant visas while the holders of those visas are inside the U.S. Aliens in A, C-2, C-3, E, G, H, I, L, and NATO status are eligible for this service if they meet criteria that are given in 22 CFR 41.125(g). Aliens in B, F, and J status are *not* eligible for this service.

6.6 Change of Nonimmigrant Classification

6.6.1. ***General discussion.*** This section covers procedures and requirements for changing from one nonimmigrant classification to another. It does not cover "adjustment of status" from that of a nonimmigrant to that of an immigrant (or permanent resident). The latter topic is discussed in Section 7.

A nonimmigrant in the U.S. may, subject to limitations specified below, change from one nonimmigrant status to another if he has maintained his original status and is eligible for the new one. [8 CFR 248] Aliens in D and K status are not eligible for any change of status. Those in C status can change only to A or G status. Those in J status can change only to A or G status. If an alien in J status is not subject to the two-year foreign residence requirement or has been granted a waiver of that requirement, he can change to H or L status.

An applicant for a change of nonimmigrant status should be able to explain satisfactorily why he did not originally enter the U.S. in the status being applied for.

6.6.2. ***Procedure for applying for change of nonimmigrant status.*** Application for change of nonimmigrant status is made on Form I-506 (Application for Change of Nonimmigrant Status). The completed application is submitted to the appropriate INS district office along with (1) the required fee (see Fee Schedule, Appendix 1), (2) the Form I-94 of the applicant and any dependents who are also applying for a change of status, (3) evidence of financial support, if applicable, and (4) evidence that the applicant is qualified for the new status. Applicants' passports must be valid for at least six months beyond the requested date of extension. (For exceptions, see Section 2.2.4.)

Changes involving F status are discussed in Section 3.13 of this *Manual*, and those involving J status in Section 4.10.

6.6.3. ***Special requirements for change to A, G, H, or L status.*** A change to A or G status may be made only after the INS receives verification from the Department of State that the applicant is entitled to one of those statuses. No fee is required for this change. [INS Operations Instruction 248.2, p. 3473]

Application for change to H or L status must be preceded or accompanied by a Form I-129B, filed by a petitioner seeking H or L classification on behalf of the alien. (Concerning H status, see Section 5.2 of this *Manual;* concerning L status, see 8 CFR 214.2[1].) Unless the Form I-129B is approved, no change to H or L status will be authorized.

6.6.4. ***Changes of classification with no application and no fee.*** According to the regulations, neither a formal application (on Form I-506) nor a fee is required to apply for a change from B-2 to B-1 status; from F-1 to F-2, or from J-1 to J-2, or from L-1 to L-2, or vice versa; or from any of the H classifications to another H classification. [8 CFR 248.3] However, some INS district offices request a completed Form I-506, rather than a mere letter, when such changes of status are sought.

6.6.5. ***Applicant's status while application for change of status is pending.*** An applicant for change of nonimmigrant status may have to wait many months to learn the outcome of his application. Under these circumstances, aliens often feel compelled to act on the assumption that the application has been approved, and to undertake activities appropriate for the new status even before the INS decides on the application for change of status. A nonimmigrant who is in one status and who files an application for change of status before the original status expires is not considered to be out of status during the pendency of the application, even if the original status expires before the new status is granted.

There is controversy, though, about the effect on a nonimmigrant's status of beginning to work during the pendency of an application to change to a status that would permit employment if the alien's original status did not permit employment. The INS Central Office has taken the position that a nonimmigrant who was in a status not allowing employment and who applies for a change to a status that would allow employment is not authorized to work during the pendency of this application. The Board of Immigration Appeals had a different view, in the special circumstances presented in *Matter of Tan,* A22 489 635, June 24, 1980. Two Regional Commissioner decisions have also taken positions suggesting that working during the pendency of an application to change to a status permitting employment is allowable. See *Interpreter Releases,* Vol. 58, No. 22, pp. 288-289, June 10, 1981.

6.7 Possibility for Study Under Nonimmigrant Classifications That Do Not Specify Student Status

Aliens in many nonimmigrant classifications can attend school, part time or perhaps full time, without violating the terms of their status in the U.S., assuming they maintain their status otherwise. Nothing prohibits aliens in A, B, E, G, H, I, K, or L status from being students. It would be considered a violation if a nonimmigrant who was admitted to the U.S. for another purpose (e.g., someone in A-1, H-1, I, or L-1 status) undertook studies as his principal activity. However, part-time studies (and occasionally short-term full-time studies) are not inconsistent with these statuses, and full-time studies are not inconsistent with the status of the dependents of people in these classifications. (For dependents, see 8 CFR 248.3 [b])

School officials have no formal immigration-related responsibilities concerning aliens who are in these nonstudent classifications and who are students.

SECTION 7

IMMIGRANT STATUS

7.1 Definition

An immigrant is an alien who has been lawfully admitted to the U.S. for permanent residence. In common usage, the word "immigrant" is interchangeable with "permanent resident" or "PR." Court decisions in recent years have established that immigrants have most of the legal rights and civil liberties that are held by U.S. citizens, the major exceptions being the right to vote and to hold some public offices. For example, it is clear that immigrants are fully eligible for federally subsidized educational aid programs. An immigrant has the right to remain in the U.S. for an indefinite length of time without any need to apply for extensions of stay, work permits, or similar benefits which must be specifically requested by nonimmigrants.

The immigration law makes no distinction as to the type of employment for which an immigrant is eligible, and under the immigration law immigrants are allowed to accept any kind of employment. However, a Presidential Executive Order of September 1976 bars aliens, including immigrants, from employment in the federal civil service. In some states, professional licensing regulations have required U.S. citizenship in the past, but a Supreme Court decision in 1973 (*in re Griffiths* 413 US 717) declared that such a condition for professional licensing was, in most cases, unconstitutional.

Although an immigrant is normally entitled to remain in the U.S. permanently, this privilege can be revoked and he can be deported under certain circumstances. Grounds for deportation of an immigrant include fraudulent entry to the U.S., the commission of certain crimes involving moral turpitude, and the determination that the alien was not eligible for immigrant status at the time he acquired it. Thus, even though an immigrant is much more secure in his right to remain in the U.S. than is a nonimmigrant, he is not completely safe from deportation.

An immigrant is never compelled to become a U.S. citizen, and he may remain in immigrant status for an indefinite length of time. He becomes eligible to apply for citizenship through naturalization, if he so chooses, after he has resided in the U.S. as a permanent resident for five years (three years if he has been married to a U.S. citizen for three years).

7.2 The Immigration and Nationality Act as Amended

The selection and screening of immigrants to the U.S. is governed by the Immigration and Nationality Act of 1952, as amended. Major amendments were passed by Congress in 1965 (PL 89-236) and in 1976 (PL 94-571). The 1965 amendment established a comprehensive new preference system for the Eastern Hemisphere, eliminated a number of discriminatory provisions against the natives of certain countries, and imposed a numerical limitation on immigrants from the Western Hemisphere. The 1976 amendment applied the preference system to the Western Hemisphere and made other important changes in the law. A 1978 amendment eliminated the distinction between the numerical limitations for the two hemispheres while the Refugee Act of 1980 (PL 96-212) repealed the seventh preference and established a worldwide ceiling of 270,000 immigrant visas per year. This section of the *Manual* is based on the Act as changed by these amendments.

7.3 Immigrant Visa or Adjustment of Status

The Act provides for two distinct avenues for becoming an immigrant or permanent resident of the U.S. The most common avenue is to apply for an immigrant visa at a U.S. consular post abroad and to enter the U.S. as an immigrant. A less common approach, but one which is of at least equal concern to advisers, is to apply for adjustment of status—a change from nonimmigrant to immigrant status—while in the U.S. There are a number of variations to the latter approach, but most involve application for adjustment of status to that of a permanent resident under Section 245 of the Act. Regardless of the avenue followed—application for an immigrant visa abroad or adjustment of status in the U.S.—the ultimate successful result is immigrant or permanent resident status for the applicant.

7.4 The Selection System

The selection of persons eligible to become immigrants involves qualitative standards and numerical limitations, both of which are governed by complex systems of allocating immigrant visa numbers by country or dependent area and by a series of six preference classifications. These systems are designed to regulate *what kinds* of persons and *how many* persons may become immigrants.

7.4.1. ***Qualitative standards.*** The intent of establishing qualitative standards is to determine *what kinds* of persons are allowed to become immigrants. Three kinds of persons constitute the major portion of those who qualify for immigrant status:

7.4.1.1. *Persons who have a family relationship to a U.S. citizen or permanent resident.* A basic objective of the law is to provide for the uniting of families. Since a U.S. citizen or permanent resident has a right to reside in the U.S., certain members of his family are given preference as immigrant applicants in order to permit the family to be together. Applicants who have U.S. citizen or permanent resident family members fall into the categories known as immediate relatives and first, second, fourth, and fifth preferences. (See Sections 7.4.2.1.1 and 7.4.3.3.)

7.4.1.2. *Persons who have skills needed in the U.S.* A second basic objective of the law is to attract to the U.S. persons whose occupational skills are in short supply here. Such persons are assigned third and sixth preference classifications (see Section 7.4.3.3). Others may enter as nonpreference immigrants or special immigrants (such as a minister of religion; see Section 7.4.2.1.2). Except for special immigrants, most of these persons must obtain labor certification (see Section 7.5), a process which, among other things, assures that their occupational skills are indeed in short supply in the U.S.

7.4.1.3. *Refugees.* The Refugee Act of 1980 defines a refugee as any person "who is unable or unwilling to return [to his country of nationality] because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion." [Act 101(a)42] For further information on the admission of aliens to the U.S. as refugees and their adjustment to permanent resident status, see Section 8.6.

7.4.2. ***Numerical limitations.*** Numerical limitations are designed to control *how many* persons may become immigrants each year and to place limits, within the total, on the number from each independent country and dependent area. This system of numerical limitations is different from the old quota system which was in effect until 1965.

7.4.2.1 *Persons not subject to numerical limitations.* Not all would-be immigrants are subject to numerical limitations. Those who are not subject are eligible for immigrant status immediately upon establishing their qualifications; they do not have to obtain an immigrant visa number under the preference system; and they are subject only to the qualitative standards established by the law. People not subject to numerical limitations are:

7.4.2.1.1. Immediate relatives of U.S. citizens. An immediate relative is defined as (1) the spouse of a U.S. citizen; or (2) the unmarried minor child (under 21 years of age) of a U.S. citizen; or (3) the parent of a U.S. citizen, provided, in the case of a parent, that the U.S. citizen is at least 21 years of age. [Act 201(b)]

7.4.2.1.2. Special immigrants. Included in the category of special immigrants are certain returning U.S. residents, former citizens, ministers of religion, and long-time U.S. government employees abroad. [Act 101(a) (27)]

7.4.2.2. *Persons who are subject to numerical limitations.* All applicants for immigrant visas other than special immigrants, immediate relatives of U.S. citizens, and the beneficiaries of special legislation are subject to annual numerical controls. As a result, an immigrant visa is not always immediately available to a person who has otherwise qualified for immigrant status (see Section 7.8.2).

A numerical limitation of 270,000 per year is placed upon immigration worldwide. [Act 201(a)] Within that worldwide annual limitation, a maximum of 20,000 immigrant visa numbers is made available to natives of any one independent country [Act 202(a)] and a maximum of 600 to natives of any one dependent area or colony, such as Hong Kong, Antigua or Dominica. [Act 202(c)] Usually, a person is considered a native of the country of his birth (not necessarily of his citizenship). However, in certain cases an applicant may be able to qualify under the numerical limitation of the country of birth of his spouse or either parent if this is necessary in order to keep his family together. [Act 202(b) and 22 CFR 42.50-42.55]

7.4.3. ***The preference system.*** The preference system is designed to regulate *what kinds* of people may become permanent residents of the U.S. All applicants who are subject to numerical limitations are required to qualify for immigrant visas under one of six preference classifications or under the nonpreference classification. The preferences are based on two of the three basic standards by which immigrants are selected: family relationships to U.S. citizens or residents and occupational skills needed in the U.S.

7.4.3.1. *How the preference system works.* Each of the six preferences is assigned a percentage of the total annual numerical limitation of immigrant visas. For

example, first preference is assigned 20 percent of the total number of immigrant visas. This means that a maximum of 20 percent of the immigrant visa numbers for the world (20 percent of 270,000, or 54,000) may be assigned to qualified first preference applicants. The total of the percentages allowed for the six preference classifications is 100 percent. In the event that not all of the maximum allocations are always used in the six preferences, those which are not used are allocated to qualified nonpreference applicants. [Act 203(a)]

7.4.3.2. *The preference system applied to independent countries and dependent areas.* If an independent country or dependent area uses all of its maximum number of 20,000 or 600 immigrant visa numbers in any fiscal year (October 1–September 30), in the following fiscal year the percentages allocated to each of the preference classifications will be applied to the country limitation as well as the worldwide limitation. [Act 202(e)] For example, during the fiscal year ending September 30, 1979, Hong Kong used all of its maximum allocation of 600 immigrant visas in the first two preference classifications. Therefore, in the fiscal year beginning October 1, 1980, Hong Kong was allowed a maximum of 20 percent of 600 (120) first preference visa numbers. This provision was added by the amendment of 1976 and is designed to assure that at least some visa numbers will be available every year in each preference category for each country if that country used all of its maximum allocation of visas in the previous year. Before this provision was enacted into law, all of the Hong Kong visa numbers were used in the first two preferences, all of the visa numbers for the Philippines were used in the first three preferences, etc., making it impossible for natives of some countries to hope for an immigrant visa to be available in the lower preference categories at any time.

7.4.3.3. *The six preference classifications and nonpreference classification.* Section 203(a) of the Act specifies the following preference classifications:

7.4.3.3.1. First preference. Twenty percent of the annual numerical limitation is assigned to "qualified immigrants who are the unmarried sons or daughters of citizens of the United States." [Act 203(a)(1)] Unmarried minor children of U.S. citizens are considered as immediate relatives and are not subject to numerical limitations. Therefore, this preference classification applies to unmarried sons or daughters who are 21 years of age or over. Labor certification is not required.

7.4.3.3.2. Second preference. Twenty-six percent of the annual numerical limitation plus any visa numbers not used in the first preference classification is assigned to "qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence," i.e., immigrant. [Act 203(a)(2)] Labor certification is not required.

7.4.3.3.3. Third preference. Ten percent of the annual numerical limitation is assigned to "qualified immigrants who are members of the professions, or who, because of their exceptional ability in the sciences or the arts, will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States." [Act 203(a)(3)] The term "profession" includes, but is not limited to, "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." [Act 101(a)(32)] This classification is frequently used by academic institutions to bring permanent foreign faculty members and researchers to the institution. Labor certification is required.

7.4.3.3.4. Fourth preference. Ten percent of the annual numerical limitation, plus any visa numbers not used in the first three preference classifications, is assigned to "qualified immigrants who are the married sons or the married daughters of citizens of the United States." [Act 203(a)(4)] Labor certification is not required.

7.4.3.3.5. Fifth preference. Twenty-four percent of the annual numerical limitation, plus any visa numbers not used in the first four preference classifications, is assigned to "qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least 21 years of age." [Act 203(a)(5)] Labor certification is not required.

7.4.3.3.6. Sixth preference. Ten percent of the annual numerical limitation is assigned to "qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States." [Act 203(a)(6)] Labor certification is required.

Aliens who qualify for third preference classification would normally also qualify for sixth preference classification. Therefore, once labor certification is secured for an alien who would normally be classified as a third preference member of the professions, the option exists for the alien or the employer to petition for third preference classification or for the employer to petition for sixth preference classification, depending upon the availability of visa numbers in those classifications for the country of origin of the alien (see Section 7.8.2). A sixth preference petition may be filed only by a prospective employer, who must demonstrate that he is seeking to fill a specific position for which there are no qualified, willing, and available U.S. resident applicants. This is established by the labor certification, which is the major hurdle to be overcome by any applicant for either third or sixth preference classification.

7.4.3.3.7. Nonpreference. Any visa numbers not used by qualified applicants in the six preference categories are made available to nonpreference appli-

cants in the chronological order in which they qualified for such visas. [Act 203(a)(7)] Although the sum of the percentages applied to the six preference categories is 100 percent, not all visas in these six categories are always used, so that sometimes nonpreference visas are available. Because of heavy demand for preference visas, however, nonpreference visas have been unavailable since September 1978, and are not expected to be available in the foreseeable future.

The unavailability of nonpreference visas adversely affects three different types of would-be immigrants: those who qualify for labor certification under Schedule A (see Section 7.5.3) but who have no job offer; investors (see Section 7.5.2); and others who are exempt from the labor certification requirement. Unless they can somehow qualify for a preference category, such people cannot obtain immigrant visas when nonpreference visas are not available.

7.4.3.3.8. Visa number "dropdown." Note that the second, fourth, and fifth preference classifications are allocated not only their assigned percentages of visa numbers, but also any visa numbers which are not needed in the higher preference classifications. Thus, the fifth preference classification, for example, may be assigned not only the 24 percent normally available to it, but also visa numbers not used in the first through fourth preference classifications. This "dropdown" is available only to the preference classifications based on family relationships, and not to those based on occupational skills (third and sixth preference). It is, by definition, available to nonpreference applicants, since they are entitled only to those visa numbers which are not used by the six preference classifications.

7.4.3.4. *Dependents.* Once eligibility for one of the preference or nonpreference classifications is established for the principal alien, his spouse and unmarried minor children who are accompanying him or following to join him generally are assigned the same preference or nonpreference classification. Separate visa petitions do not have to be filed for these dependents unless they are otherwise entitled to an immigrant status and the immediate issuance of a visa. [Act 203(a)(8) and 8 CFR 204.1(a)] Like the principal alien, however, they are required to submit basic documents such as birth certificates and to undergo medical examinations in order to establish eligibility for derivative immigrant status. Alien dependents who do not accompany the principal alien to the U.S. may later qualify for immigrant status under the second preference classification with a separate visa petition if visa numbers are not immediately available under the principal alien's classification because of a later increased demand.

7.4.4. ***Ineligibility for immigrant status.*** In addition to specifying qualitative standards and numerical limitations for positively establishing eligibility for immigrant status, the Act also lists a number of specific grounds for ineligibility for such status.

7.4.4.1. *Section 212(a)(1-33).* These subsections of the Act specify 33 grounds for ineligibility for visas and admission. Aliens ineligible under these subsections generally fall into four categories: (1) aliens who are personally undesirable, such as physically or mentally deficient people, those who are likely to become public charges, those with a serious criminal record (including those who have been convicted of a violation of any law relating to illegal possession of or traffic in narcotic drugs or marijuana), illiterates, subversives (including members of a communist party unless they can demonstrate that they have effectively terminated all connections with the party and do not hold communist beliefs), persons who participated in the persecution of others under the Nazi government of Germany, and smugglers of illegal aliens; (2) aliens who arrived in the U.S. in an improper or illegal manner or who were previously excluded or deported from the U.S.; (3) aliens who lack proper documentation; and (4) aliens who are ultimately ineligible for U.S. citizenship. [Act 212(a)(1-33)]

7.4.4.2. *Foreign medical doctors.* In October of 1976, Congress enacted the Health Professions Educational Assistance Act (PL 94-484), in which it declared that there is no longer a shortage of medical doctors in the U.S. and expressed concern over the quality of health care provided by medical doctors who had obtained their training outside the U.S. PL 94-484 added the 32nd ground of ineligibility for immigrant status in the third and six preference and nonpreference classifications and declared as ineligible "aliens who are graduates of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the U.S.) and are coming to the United States principally to perform services as members of the medical profession, except such aliens who have passed Parts I and II of the National Board of Medical Examiners examination (or an equivalent examination as determined by the Secretary of Health and Human Services (HHS)) and who are competent in oral and written English." [Act 212(a)(32)] The Secretary of HHS has determined that the Visa Qualifying Examination (see Section 7.4.4.2.1.) is the equivalent of Parts I and II of the NBME Examination. Therefore, with the exception of those medical doctors specified in Section 7.4.4.2.3, all medical doctors applying for immigrant status on the basis of their profession must pass the Visa Qualifying Examination (VQE).

In addition, the Department of Labor subsequently adopted regulations which removed medical doctors from automatic labor certification under Schedule A (see Section 7.5.3), excepting those who will be employed in a geographic area which has been designated by the Secretary of Health and Human Services

as a "health manpower shortage area" for their particular specialties. Physicians and surgeons must therefore have a prospective employer who will secure individual labor certification for them and assist them in qualifying for third or sixth preference classification.

7.4.4.2.1. The Visa Qualifying Examination. The Department of Health and Human Services, working with the National Board of Medical Examiners and the Educational Commission for Foreign Medical Graduates (ECFMG), has determined that the VQE is an acceptable equivalent to Parts I and II of the NBME Examination. The ECFMG publishes a booklet that gives detailed information on the VQE. This booklet can be obtained from the Commission at 3624 Market St., Philadelphia, PA 19104. Telephone (215)349-9000.

7.4.4.2.2. ECFMG certification. Foreign medical doctors who wish to enter the U.S. either permanently or temporarily for medical practice (including graduate medical training on J nonimmigrant visas) must not only pass the VQE, but must also obtain certification by the ECFMG as a prerequisite for licensing in most states. To be eligible for ECFMG certification, the alien must (1) pass an ECFMG examination and (2) successfully complete the educational and other requirements stipulated in the Commission's information booklet. Further information on these examinations and requirements can be obtained from the Commission in Philadelphia.

7.4.4.2.3. Exemption from the Visa Qualifying Examination. Foreign medical doctors applying for immigrant status are not required to pass the VQE if they fall into one of the following categories:

1. Alien medical doctors who were on January 9, 1977, fully and permanently licensed to practice medicine in a state, *and* who held on that date a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties, *and* who were practicing medicine in a state. Such medical doctors are considered to have passed Parts I and II of the NBME Examination. [PL 95-83, Section 602(a), technical amendment as a note to 8 USC 1182] The term "state" means any state of the U.S. plus the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, as defined in Act 101(a)(36).

2. Alien doctors who graduated from a school accredited by a body approved by the Secretary of Education. [Act 212(a)(32)] In effect, this means aliens of any nationality who have graduated from a U.S. or Canadian medical school, or the medical school of the American University of Beirut.

3. Alien medical doctors who are considered to be "of national or international renown" in the field of medicine. [Act 101(a)(41)] The Departments of State and Justice are responsible for developing guidelines to determine whether a foreign medical doctor is "of national or international renown." These guidelines have yet to be issued, but only those alien doctors who have made outstanding contributions in their fields of medical specialization can expect to be so designated. Such individuals will not be accorded J-1 Exchange Visitor visas, but only H-1 or immigrant visas.

4. Those medical doctors who are applying for immigrant status on the basis of a family relationship to a U.S. citizen or permanent resident (immediate relative, first, second, fourth, or fifth preference) rather than on the basis of their profession. [Act 212(a)(32)] However, in order to practice medicine in the U.S., it would usually be necessary for such a medical doctor to pass the ECFMG examination and obtain ECFMG certification in order to secure state licensure.

7.4.4.3. *Exchange Visitors subject to the two-year home country residence requirement.* Persons who hold or held J-1 or J-2 Exchange-Visitor status and who are subject to the two-year home country residence requirement of Section 212(e) of the Act are not eligible to become immigrants or permanent residents until they have either satisfied that requirement or have had it waived. See Section 4.9.

7.4.5. ***Procedures for establishing qualifications for immigrant status.*** An alien may establish his qualification for immigrant status through a petition filed with the INS or with a consular office, and/or through receiving a labor certification or establishing that labor certification is not required in his case.

7.4.5.1. *Petitions for family members.* Aliens who qualify for immigrant status on the basis of family relationship to a U.S. citizen or permanent resident (immediate relatives, first, second, fourth, and fifth preferences) establish that qualification through the filing of a Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa, Form I-130. The petition is filed by the U.S. citizen or permanent resident family member, who is the petitioner, in behalf of the alien, who is the beneficiary. If the petitioner is residing in the U.S., and the beneficiary is not, the petition is filed with the INS office having jurisdiction over the petitioner's place of residence. If the beneficiary is also living in the U.S., the petition can be filed with the INS office having jurisdiction over the petitioner's *or* the beneficiary's place of residence. If the petition is filed with the INS office that has jurisdiction over the beneficiary's place of residence, and immigrant visas are immediately available in the appropriate preference category, the beneficiary can apply for adjustment to permanent resident status at the same time the preference petition is filed. The preference petition and the immigrant visa application can be filed in person, under the terms of the "one-step processing" procedure that the INS adopted in 1979 in order to expedite the processing of adjustment applications. (See Section 7.7.3)

If the petitioner is residing abroad, the petition is filed with an INS office abroad or, in certain cases, with a U.S. consular office abroad (see 8 CFR 204.1). A petitioner living abroad should consult the nearest

American consulate to learn the location of the consular office or foreign office of INS designated to act on the petition. Instructions for completing and filing the petition are included on the Form I-130. A fee is required (see Fee Schedule in Appendix 1). Labor certification is not required.

7.4.5.2. *Petitions for alien workers.* Aliens who qualify for immigrant status on the basis of their profession or occupation (third and sixth preference) establish that qualification through the filing of a Petition to Classify Preference Status of Alien on Basis of Profession or Occupation, Form I-140.

A third preference petition may be filed by either the alien, his prospective employer, or an authorized agent on their behalf. Whether the petition is filed by the alien or the prospective employer, the alien must have a job offer in order to qualify for third preference classification. A sixth preference petition may be filed only by a prospective employer in behalf of an alien, and, of course, a job offer is required.

Both third and sixth preference petitions are filed with the INS office which has jurisdiction over the intended place of employment of the alien. If the alien is abroad and is applying for third preference classification in his own behalf, he must take the completed petition to a U.S. consular office or INS office abroad, where a consular officer or INS officer will administer the required oath or affirmation and instruct the applicant as to proper INS office in the U.S. to which the petition must be sent. If the alien beneficiary is in the U.S., he may apply for adjustment of status to that of a permanent resident at the same time he or his employer files the petition to classify him as a third or sixth preference alien *provided* a visa number is immediately available to him. The petition and application can be submitted in person, under the terms of the "one-step processing procedure" mentioned in the preceding section.

Instructions for completing and filing the petition, as well as for the documentation required, are included on the Form I-140. A fee is required (see Fee Schedule in Appendix 1). In all cases, a labor certification is a prerequisite to qualifying for third or sixth preference classification.

7.4.5.3. *Establishing qualifications for nonpreference classification.* An alien establishes his eligibility for nonpreference classification on the basis of a labor certification or of exemption from the labor certification requirement (see Section 7.5.2.3). No petition is required. If nonpreference immigrant visa numbers are immediately available (see Section 7.4.3.3.7), he may immediately apply for an immigrant visa or for adjustment of status. If nonpreference visa numbers are not available, he may place his name on a waiting list at a U.S. consular office in his home country to await visa availability. He is not eligible to apply for adjustment of status in the U.S. until an immigrant visa number is immediately available to him. Nonpreference visa numbers are not currently available and it appears that they will not be available in the near future.

7.5 Labor Certification

7.5.1. ***Definition and purpose.*** A labor certification is a determination and certification by the U.S. Department of Labor that "(A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or arts), and available" to fill positions of the kind being offered a specific alien, and "(B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed." [Act 212(a)(14) and 20 CFR 656 as revised in Federal Register Vol. 45, No. 246, December 19, 1980] Anyone working with labor certification applications is well advised to have a copy of the December 19 *Federal Register* notice, since the instructions that accompany the form on which labor certification applicants are made (the Application for Alien Employment Certification, or Form ETA 750) do not contain all the information that is needed to understand the application requirements and procedures.

The goals of the labor certification process are to assure that aliens seeking employment in the U.S. will not be taking jobs for which qualified U.S. citizens or permanent residents are available and will not be employed under conditions less favorable than those under which qualified U.S. citizens or permanent residents would be employed, thereby adversely affecting the wages and working conditions of U.S. workers.

7.5.2. ***Applicability of the labor certification requirement.*** Generally, labor certifications are required of prospective immigrants who are coming to the U.S. for the purpose of entering the labor force. They are not required of family members, refugees, and certain other prospective immigrants.

7.5.2.1. *Workers.* Aliens who need a labor certification are those who apply for third or sixth preference classification or nonpreference classification for the purpose of being employed in the U.S. [Act 212(a)(14)]

7.5.2.2. *Family members and refugees.* Aliens who do not need a labor certification are those who are (1) immediate relatives of U.S. citizens; (2) beneficiaries of relative petitions in the first, second, fourth, and fifth preference classifications; (3) the spouses and unmarried minor children accompanying or following to join an alien who has been accorded any preference or nonpreference immigrant classification; and (4)refugees [Act 212(a)14 and 101(a)(42)].

7.5.2.3. *Others exempted from the labor certification requirement.* There are five additional catego-

ries of aliens who do not require labor certifications [see 22 CFR 42.9(a)(14)(ii)(a-e) and 8 CFR 212.8(b)]. They are (1) aliens who satisfy a consular officer that they do not intend to seek employment in the U.S.; (2) spouses or children accompanying or following to join an alien spouse or parent who either has a labor certification or is a nondependent alien who does not require a labor certification; (3) female applicants who intend to marry a U.S. citizen or permanent resident alien, who do not intend to seek employment in the U.S., and whose U.S. citizen or permanent resident fiance has guaranteed support (Note: The fiancee of a U.S. citizen usually enters the U.S. as a nonimmigrant in K status rather than as an immigrant. See Section 6.2.10); (4) members of the U.S. armed forces; and (5) investors. An investor is "an alien who establishes. . .that he has invested or is actively in the process of investing, capital totaling at least $40,000 in an enterprise in the United States of which he will be a principal manager and that the enterprise will employ a person or persons in the United States who are United States citizens or aliens lawfully admitted for permanent residence, exclusive of the alien, his spouse and children." [8 CFR 212.8(b)(4); also see 22 CFR 42.91(a)(14)(ii)(d)] It should be noted that investors qualify only for nonpreference classification, and immigrant visas are currently not available to them (see Section 7.4.3.3.7).

7.5.3. ***Schedules A and B.*** To avoid having to adjudicate every labor certification application on a case-by-case basis, the Department of Labor has determined that there are some occupations in which a shortage of qualified U.S. workers exists. The list of these occupations is known as Schedule A. The Department of Labor has also determined that there is a sufficient number of U.S. workers available for certain other occupations. The list of these occupations is known as Schedule B. Aliens in occupations listed on Schedule B are not eligible for labor certification unless it can be established by a prospective employer that he has been unable to obtain qualified U.S. workers for a particular job opening. Schedule B includes such workers as janitors, parking lot attendants, and elevator operators [see 20 CFR 656.11]. Labor certification applications involving occupations or individuals not on Schedules A or B are discussed in Section 7.5.4.

7.5.3.1. *Schedule A.* Schedule A is divided into four groups, each of which is discussed below. Aliens who qualify for the occupations listed in Schedule A, Groups I through IV, are granted labor certification on the basis of their qualifications and the offer of a specific job. The prospective employer need not demonstrate, as he must in the case of a non-Schedule A application, that he has been unable to obtain qualified U.S. workers for a particular job. The following groups of occupations are included in Schedule A (see 20 CFR 656.10).

7.5.3.1.1. Group I. Only three occupations remain in Group I, which formerly was much larger. These are physical therapists, nurses, and physicians (or surgeons). [20 CFR 656.10(a)] To qualify under Group I of Schedule A, a physical therapist needs to hold a bachelor's degree. An alien nurse must have passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination or hold a full and unrestricted license to practice professional nursing in the state of intended employment. An alien medical doctor may qualify only if he will be employed in a geographic area which has been designated by the Secretary of Health and Human Services as a *Health Manpower Shortage Area*, "or has been identified otherwise by the Secretary of HHS as having an insufficient number of physicians in the alien's medical specialty in accordance with Section 906 of the Health Professions Education Assistance Act." [20 CFR 656.10(a)(2)] Under the regulations based on this act, a signed statement from the appropriate Regional Health Administrator (RHA), Public Health Service Regional Office, Department of HHS, or the RHA's designee is required as documentation of the physician's or surgeon's Schedule A eligibility. RHAs are the chief officials of the regional offices of the Public Health Service in HHS. The appropriate RHA is the one in whose region the position to be filled by the alien is located.

7.5.3.1.2. Group II. Group II includes "aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term 'science or art' means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill." An alien need not have studied at a college or university to qualify under Group II. Most university-related Schedule A applications come under the terms of Group II of Schedule A. [20 CFR 656.10(b)]

7.5.3.1.3. Group III. Group III consists of people seeking to enter the U.S. to perform certain religious occupations or work in certain religious activities. [20 CFR 656.10(c)]

7.5.3.1.4. Group IV. Group IV consists of aliens who are currently working in managerial or executive positions with international corporations or organizations which wish to use their services in the U.S., provided the aliens were continuously employed by the same corporation or organization for one year prior to their entry to the U.S. [20 CFR 656.10(d)]

7.5.3.2. *Procedure for Schedule A applications.* Procedures for Schedule A labor certification applications vary, depending upon the place of residence of

the alien and whether he intends to apply for third or sixth preference classification.

If the alien applicant is outside the U.S. and will apply for a nonpreference classification, he applies for labor certification on Form ETA 750 to the U.S. consular office having jurisdiction over his place of residence. If nonpreference immigrant visa numbers are immediately available, he can file his application for an immigrant visa simultaneously or subsequently. Decisions on both the labor certification and the immigrant visa application will be made by the consular officer. (Note that nonpreference visas have been unavailable since September 1978, and probably will continue to be unavailable for the foreseeable future.)

Regardless of his place of residence, if the alien will apply for third or sixth preference classification, he should file his Schedule A labor certification application with the INS office in the U.S. having jurisdiction over his proposed place of employment. The application is made on Form ETA 750. The alien or his employer may simultaneously file a Form I-140 petition for third preference classification, or the employer may simultaneously file a Form I-140 petition for sixth preference classification. If the alien is in the U.S., and if third or sixth preference visa numbers are immediately available, he can also simultaneously file an application for adjustment of status to that of a permanent resident on Form I-485 and the other forms which make up the I-485 package (see Section 7.7.3).

An alien who is outside the U.S. and who will apply for third or sixth preference classification may, as an alternative, file his Schedule A labor certification application with a consular officer. However, in that circumstance the consular officer will only review the application and forward it to the INS office having jurisdiction over the intended place of employment for a decision to be made in conjunction with the decision on the third or sixth preference petition.

An alien who is in the U.S. and who intends to apply for nonpreference classification files his Schedule A labor certification application on Form ETA 750 with the INS office having jurisdiction over his intended place of residence. If nonpreference visa numbers are immediately available, he can file his application for adjustment of status (Form I-485) simultaneously. (Note that nonpreference visas have been unavailable since September 1978, and probably will continue to be unavailable for the foreseeable future.)

7.5.3.2.1. Group I. In addition to the Form ETA 750, applicants under Group I of Schedule A must submit documentary evidence of their qualifications, as specified in 20 CFR 656.22(c).

7.5.3.2.2. Group II. In addition to the Form ETA 750, applicants under Group II of Schedule A must submit documentary evidence "testifying to the current widespread acclaim and international recognition accorded them by recognized experts in their fields; and documentation showing that their work in that field during the past year did, and their intended work in the United States will, require exceptional ability." In addition, the aliens must file, as part of their labor certification applications, documentation from at least two of the following seven groups: [20 CFR 656.22(d)]

"1. documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;

"2. documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievements of their members, as judged by recognized international experts in their fields;

"3. published material in professional publications about the alien, relating to the alien's work in the field for which certification is sought;

"4. evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought;

"5. evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought;

"6. evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation; and/or

"7. evidence of the display of the alien's work, in the field for which certification is sought, at artist exhibitions in more than one country."

7.5.4. ***Non-Schedule A occupations.*** In the case of Schedule A applications, the consular or immigration official must determine only whether the applicant has the qualifications for certification under Schedule A. In the case of *non-Schedule A* applications, a Labor Department official must determine not only that the applicant has the requisite qualifications, but also that there are *no* qualified U.S. workers (or no *equally qualified* U.S. workers in the case of college and university teaching positions) available to fill the position and that the position offers wages and working conditions which are not lower than those under which a similarly qualified U.S. citizen or permanent resident would work.

Applications for labor certification for non-Schedule A positions are filed on Form ETA 750 with the State Employment Service Office having jurisdiction over the alien's prospective place of employment. The Form ETA 750 and accompanying documents must demonstrate that the prospective employer has made a conscientious effort to recruit a qualified U.S. citizen or permanent resident to fill the position for which labor certification is being sought. Certification is likely to be denied if there is any suggestion that the employer has tailored the list of qualifications in such a way as

to make anyone other than a particular alien appear unqualified for the position.

The position that is offered must be a "permanent" one if the labor certification is to be used as the basis for an application for an immigrant visa. While the term "permanent" is not expressly defined in the regulations, it is usually interpreted to refer to a job offer which does not have an anticipated termination date.

7.5.4.1. *Positions other than college and university teachers.* In the case of a non-Schedule A position that does not involve college or university teaching, a labor certification cannot be issued unless the alien is the *only* qualified applicant available and willing to take the position. If a qualified U.S. worker applies for the position and is willing to accept it, a labor certification will not be granted even if the alien applicant is better qualified. Requirements for the "basic labor certification process" are detailed in 20 CFR 656.21.

The Form ETA 750 and accompanying documents must contain:

1. the qualifications of the alien;
2. a description of the job offer;
3. evidence that there are no unduly restrictive job requirements;
4. evidence that the job description accurately reflects the minimum requirements and that it is not feasible to hire unqualified U.S. workers and provide training that would prepare them for the position in question;
5. evidence of:

a. *pre-application recruitment:* documentation that within the prior six months there have been good faith efforts to recruit U.S. workers through the state employment service, employment agencies or other sources normal to recruitment in that occupation and that such efforts have been unsuccessful. This documentation would list:

i. the recruitment sources used;
ii. the number of U.S. workers responding;
iii. the number of U.S. workers interviewed;
iv. the wages and working conditions offered;

and would show:

v. a copy of an advertisement that had run in a newspaper of general circulation for three consecutive business days or in one issue of an appropriate professional publication;
vi. that a notice of the job opening had been prominently posted at the place of business for 10 business day; and
vii. the lawful job-related reasons why U.S. applicants had been considered unqualified;

and/or evidence of:

b. *post-application recruitment:* willingness to place the job offer into the state employment service system and to proceed with advertising, posting, and other efforts to find qualified U.S. workers. (Note: The Regional Certifying Officer may reduce any or all post-application recruitment efforts if he is satisfied that the employer has adequately tested the market with pre-application recruitment with no success.) A letter directed to the Certifying Officer requesting a waiver of further recruitment may be attached to the Form ETA 750 and should explain clearly the nature of the unsuccessful recruitment efforts carried out in the last six months (see 5(a) above) and information as to why the employer believes that further recruitment efforts would prove unsuccessful.

If the request for a waiver of further recruitment is denied or if there has been no pre-application recruitment, the employer must place the job into the state employment service system and comply with the advertising and posting requirements described above.

A labor certification application based on post-application recruitment must report:

1. results of all post-application recruitment,
2. the number of U.S. applicants,
3. the names and resumes of all U.S. applicants,
4. the lawful job-related reasons for not hiring U.S. workers.

In the interest of time and in the interest of avoiding the necessity of providing names and resumes of all U.S. workers who applied for the position, institutions wishing to employ alien researchers and other staff may wish to utilize the pre-application recruitment procedure whenever possible if it is determined that, in the institution's Department of Labor (DOL) region, the Certifying Officer is willing to grant requests for waivers of post-application recruitment in an expeditious manner.

7.5.4.2. *College and university teachers.* Standards and procedures for non-Schedule A applications involving college or university teachers are different from those involving other kinds of positions. In the case of a college or university teacher, a labor certification can be issued if the alien is *more* qualified than any U.S. applicant for the position; he need not be the only qualified applicant, as he must be in order to obtain a labor certification for other non-Schedule A occupations. [Act 212(a)(14)] This provision applies only to college and university teachers; it does not apply to researchers or other college and university staff members. The complete regulations concerning labor certification for college and university teachers not on Schedule A are found in 20 CFR 656.21a.

Application for a labor certification for a prospective college or university teacher is made by filing Form ETA 750 (application for Alien Employment Certification), in duplicate, with the state employment/job service office serving the area in which the college or university is located. Along with the completed Form ETA 750, the employer needs to submit "documentation to show clearly that the employer selected the alien for the job opportunity pursuant to a competitive recruitment and selection process, through which the

alien was found to be more qualified than any of the United States workers who applied for the job."

Evidence concerning the competitive recruitment process is to include the following:

"1. a statement, signed by an official who has actual hiring authority, . . . outlining in detail the complete recruitment procedure undertaken, (and including)

a. the total number of applicants for the job. . . ;

b. the specific, lawful, job-related reasons why the alien is more qualified than each U.S. worker who applied for the job; and

c. a final report of the faculty, student, and/or administrative body making the recommendation or selection of the alien. . . ;

"2. a copy of at least one advertisement for the job. . . [that appeared] in a national professional journal, giving the name and the date(s) of publication, and which states the job title, duties, and requirements;

"3. evidence of all other recruitment resources utilized; and

"4. a written statement attesting to the degree of the alien's educational or professional qualifications and academic achievements."

Labor certification applications filed after December 31, 1981, for job opportunities for college or university teachers must be filed within 18 months of the selection that followed a competitive search.

Upon receipt of a labor certification application for a position for a college or university teacher, the local state employment/job service office will date stamp the application (for the significance of this date stamp, see Section 7.8.2.1) and make sure it is complete. The local office will calculate the prevailing wage for the job opportunity, to assure that the salary being offered the alien is not below the prevailing one. Finally, the local office will send a file containing the application, and any additional information pertaining to it, to the state employment/job service central office or, if appropriate, to the DOL Regional Certifying Officer.

Note that, in the case of labor certification applications for college and university teaching positions, no additional recruiting is required following submission of the application to the employment/job service office.

7.5.4.3. *Processing of non-Schedule A applications.* The employer files the Form ETA 750 and all supporting documentation with the nearest state employment/job service office, which carries out an initial screening of the application for completeness and for compliance with all requirements. The local office also calculates the prevailing wage for the job opportunity and puts its findings into writing. If the local office finds that the rate of wages offered is below the prevailing wage, it advises the employer in writing to increase the amount offered. Failure to comply with this advice may result in the ultimate denial of the labor certification. The application will then be forwarded, with a recommendation, to the central office of the state employment/job service or to the Regional Certifying Officer of the Department of Labor, who will make a final determination. The entire labor certification process is lengthy. Advisers may wish to request estimates of processing time from the local office or the Regional Certifying Officer.

7.5.4.4. *Decision and procedures after decision on non-Schedule A applications.* Decisions on non-Schedule A applications are normally made by the Regional Certifying Officer at the regional Department of Labor office having jurisdiction over the state employment/job service office where the application was filed. The decision is made on the basis of the application form, the supporting documents, information added by the state employment/job service, and DOL information about the labor market. [20 CFR 656.25]

If the Certifying Officer believes the application is not approvable, he sends the employer a "Notice of Findings" which gives (1) the date the notice is issued; (2) the specific reasons for which the Regional Certifying Officer has tentatively determined that the labor certification application is deniable; (3) the date, 35 calendar days from the date of issuance of the Notice of Findings, by which the employer must rebut the Notice of Findings; and (4) an explanation of the rebuttal procedures that the employer should follow.

A written rebuttal to the Notice of Findings can be submitted by the employer or by the alien, but the alien can submit a rebuttal only if the employer also does so.

The rebuttal must be sent by certified mail within 35 calendar days following issuance of the Notice of Findings. The rebuttal may contain evidence or arguments intended to refute statements made in the Notice of Findings, or to show that defects described in the Notice of Findings have been remedied.

If no rebuttal is submitted, the Notice of Findings becomes a denial that is not subject to administrative review.

If a rebuttal is submitted, the Certifying Officer will consider it and then either approve or deny the labor certification.

If the application is approved, either originally or following a rebuttal to a Notice of Findings, the Regional Certifying Officer applies an official stamp to the application and sends the application, supporting documentation, and completed Final Determination Form either to the employer (or the employer's agent, if appropriate), or, if the alien is abroad and nonpreference visa numbers are currently available, to the appropriate U.S. consular office. The Final Determination Form carries instructions concerning the next step the alien (and the employer, if appropriate) should take in seeking an immigrant visa for the alien.

If the application is denied, the Certifying Officer will send the employer a Final Determination Form giving (1) the date of the denial, (2) the reasons for the denial, and (3) information about appeal procedures

that are open to the employer. After six months, the employer may apply anew for a labor certification for the same position. There is no waiting period, though, in cases where the certification was denied because the wage or salary offered was below the prevailing wage.

7.5.5. ***Appeals***

7.5.5.1. *Schedule A applications.* There is no appeal to any Labor Department official from the denial of a Schedule A application. [20 CFR 656.22(h)(2)] If an application submitted under Schedule A is denied, it can be submitted, with appropriate additional documentation, as a non-Schedule A application.

7.5.5.2. *Non-Schedule A applications.* When a non-Schedule A application has been denied, either the employer or the alien, supported by the employer, can request an "administrative–judicial review." The request must be filed in writing within 35 days of the final denial and issuance of the Final Determination Form, and it must meet guidelines spelled out in 20 CFR 656.26. The review is conducted by a hearing officer designated by the Labor Department's Chief Administrative Law Judge.

7.5.6. ***Further information regarding labor certification.*** The above description is a simplified summary of very complicated and detailed procedures and standards set out in Department of Labor regulations. Advisers are urged to obtain and study the complete and detailed regulations, which are contained in 20 CFR 656 as revised in the *Federal Register* of December 19, 1980.

7.6 Applying for an Immigrant Visa Abroad

There are two basic steps to obtaining an immigrant visa abroad. The first is establishing one's eligibility for a particular immigrant classification. This is discussed in Section 7.4.5. The second is submitting the actual application for an immigrant visa.

When eligibility for an immigrant visa has been established, and when a visa number is available to a native of the prospective immigrant's country of birth (see Section 7.4.2 on numerical limitations and Section 7.8.2 on availability of visa numbers), the U.S. consular office supplies the prospective immigrant with the necessary application forms and instructions. In addition to an application form, the complete application includes fingerprint cards, a biographic data sheet, a health certificate, a police certificate, and an application for a Social Security number.

When the applicant informs the consular officer that he has all of the necessary documents, and the internal procedures have been completed, a final interview is scheduled. The alien's documents are reviewed at the time of the interview.

7.7 Applying for Adjustment of Status in the U.S.

The process of obtaining immigrant status by adjusting from nonimmigrant to immigrant status while in the U.S. is basically the same as that for obtaining an immigrant visa abroad. It involves establishing eligibility for an immigrant visa by one of various means, and then applying for immigrant status. However, there is the additional requirement that an immigrant visa must be immediately available to the prospective applicant, and there are some circumstances which render ineligible for adjustment of status individuals who might be eligible for an immigrant visa if they were filing a visa application abroad.

7.7.1. ***Establishing eligibility to adjust status in the U.S.*** In addition to establishing eligibility by one of the means discussed in Section 7.4.5, the nonimmigrant who would adjust status in the U.S. must have an immigrant visa immediately available to him. [Act 245] Availability of immigrant visas is a function of the numerical limitations on immigrant visas for natives of each country and/or dependent area (see Section 7.4.2) and of the number of visas available in each preference classification (see Section 7.4.3). See also Section 7.8.2 on availability of visa numbers.

If a nonimmigrant in the U.S. is eligible for immigrant status except for the fact that an immigrant visa is not immediately available to him, he is usually required to leave the U.S. to file a visa application abroad. In such cases, the documents establishing his eligibility can be sent to a consular office abroad (usually in his own country) where they are held until a visa number is available. In some other cases, the alien may be allowed to remain in the U.S. if he continues to fulfill the conditions of his nonimmigrant status, or if he is placed by the INS in voluntary departure status (see Section 2.8). Maintaining nonimmigrant status is not always possible, as INS may determine that the alien has violated the terms of his nonimmigrant status by having abandoned his intention to return to his home country. If it is not possible to maintain nonimmigrant status, the alien or the employer or both can request INS to grant voluntary departure status to the alien to allow him to remain in the U.S. to wait for visa availability. If the waiting period is expected to be brief, INS will frequently grant this privilege; if the waiting period is expected to be long, the alien usually is required to leave the U.S. Practice in this respect frequently varies among INS district offices.

7.7.2. ***Nonimmigrants ineligible to adjust status.*** There are several situations in which aliens are ineligible to adjust to immigrant status in the U.S. even though they may be able to establish their qualifications for immigrant status by one of the means discussed in Section 7.4.5 and immigrant visas are immediately available to them. Those situations are as follows:

7.7.2.1. *Transit aliens and crewmen.* Nonimmigrants admitted to transit (C or TWOV) or crewmen

(D) status, and aliens who were not inspected and admitted or paroled, are ineligible to adjust status. [Act 245(c)]

7.7.2.2. *Aliens employed without authorization.* Nonimmigrants, except for immediate relatives of U.S. citizens (see Section 7.4.2.1.1), are ineligible to adjust status if they have accepted or continued in unauthorized employment after January 1, 1977, and prior to applying for adjustment of status. [Act 245(c)] This important provision of PL 94-571 was intended to discourage nonimmigrants from accepting unauthorized employment.

7.7.2.3. *Avoiding disqualification because of unauthorized employment.* There are at least three ways in which an alien can attempt to avoid disqualification from eligibility for adjustment of status by reason of employment.

First, the alien can file his application for adjustment of status (Form I-485) simultaneously with the filing of the preference petition (Form I-130 or I-140) or with the Schedule A labor certification application (Form ETA 750), if an immigrant visa number is immediately available. At the time these documents are filed, the alien may request employment authorization (see Section 7.7.3).

If an immigrant visa number is not immediately available, the alien may attempt to maintain status as a nonimmigrant while his application is being processed. If he is allowed to do so by INS, and if his nonimmigrant status carries with it authorization to work, he will not be considered to have engaged in unauthorized employment during the processing time. However, INS may or may not allow him to retain his nonimmigrant status, as he may be deemed to have forfeited that status by abandoning his intention to return to his home country.

Third, the alien or the employer or both may request INS to grant the alien voluntary departure status with authorization to be employed while the labor certification application is pending and/or while the alien is waiting for a visa number to become available. Such a request is most effective if it is based on humanitarian factors or if the employer can demonstrate an urgent need for the services of the alien during the processing time. It is not likely to be granted by INS unless the waiting time will be brief.

If none of these attempts is successful, the alien must refrain from engaging in any employment, or he will be disqualified from eligibility for adjustment of status. If he is disqualified because he worked without authorization to do so, he is still eligible to apply for an immigrant visa at an American consular post abroad.

7.7.3. ***Application for adjustment of status.*** An alien who is eligible to seek adjustment to permanent resident status, e.g., on the basis of the acquisition of a labor certification or an immediate relative petition, may submit all appropriate documents at an INS office in person, or by mail. The documents usually required include Form I-130 (preference petition based on family relationship) or Form I-140 (preference petition based on occupation); an approved labor certification (Form ETA 750) if the application is for third or sixth preference classification; Form I-485 (the application for permanent resident status); Form I-486 (Medical Examination and Immigration Interview); evidence of financial support; fingerprint cards; birth certificate; marriage certificate (if applicable); photographs that meet certain specifications; and the required fee. The instructions on the preference petitions and the adjustment application make clear what supporting documents are needed for any particular application.

If the preference petition and adjustment application are submitted in person, the alien is interviewed at the time of the submission by an immigration examiner. If the examiner is satisfied that the documents are complete and in compliance with all requirements, he issues to the alien a form (usually Part 4 of Form I-181) indicating that all necessary documents for adjustment of status have been received. Upon request, he will grant the alien employment authorization at this point. Final notice of approval (or disapproval) of the adjustment of status request is to be mailed to the alien after 60 days, although a somewhat longer period is often needed. This notice usually appears on Part 5 of Form I-181, if the application has been approved, and is valid for six months; it is equivalent in almost all respects to the "green card," the Form I-551, and can be used for reentry into the U.S. The Form I-551 will be mailed to the alien within the six-month period.

If the preference petition and adjustment application are submitted by mail, the INS will review them and then send the applicant a notice giving the date and time he is requested to appear at the INS office for the interview. Employment authorization can be requested at the time the application is mailed to the INS.

7.7.4. ***Departure from the U.S. during processing of application for adjustment of status.*** Unless special provisions for return to the U.S. are made, a person who has applied for adjustment of status under Section 245 of the Act is considered to have abandoned his application for adjustment if he leaves the U.S. while the application is pending. To avoid abandoning his application, such an alien should, before leaving the U.S., apply to his district INS office for advance parole authority on Form I-512. [8 CFR 212.5(c)] The INS will grant advance parole only if it is presented with convincing evidence that the alien's temporary departure from the U.S. is necessitated by an urgent business or family matter. An alien is eligible for advance parole in these circumstances only after he has filed an application for adjustment of status (Form I-485).

An adjustment application is not considered abandoned if the alien departed the U.S. without advance parole authority and the INS officer having jurisdiction over his application later determines that "his depar-

ture was unintended and casual, that his absence was brief, and that he was inspected upon his return" to the U.S. [8 CFR 245.2(a)(3)]

A special situation arises if the alien leaves the U.S. after his preference petition is filed or after he has otherwise indicated his intent to become a permanent resident. In such a case, he may not be eligible for readmission to the U.S. as a nonimmigrant, as he may be considered an intending immigrant. If he does reenter the U.S. as a nonimmigrant, he runs the risk of having his subsequent application for adjustment of status denied on the grounds that he fraudulently reentered the U.S. In such circumstances, the alien would have to wait outside the U.S. until his preference petition is approved or he has otherwise clearly established that he is eligible for immigrant status, and he would then apply for an immigrant visa to enter the U.S. This may involve a long delay. Therefore, it is necessary for the alien and the employer to plan carefully and to consider the time required for processing all phases of the application, and for the alien to remain in the U.S. until he is eligible to apply for advance parole or until his application for adjustment of status is finally approved.

7.8 Time Required to Obtain Immigrant Visa or Status

There are two considerations that influence the amount of time required to obtain an immigrant visa while abroad or adjust to immigrant status in the U.S. One is processing time for petitions and applications, and the other is the availability of visa numbers.

7.8.1. ***Processing time.*** The amount of time required to adjudicate visa petitions and immigrant visa applications is a function of the staffing and workload at the particular INS or consular office where the petitions and applications are submitted. At the extremes, these processing times probably range from about two months at some of the less busy consular posts to a year or more at some of the very overworked INS district offices in the U.S. Advisers can ask INS district offices for an estimate of the time required to process various petitions and applications.

7.8.2. ***Availability of visa numbers.*** If an immigrant visa is immediately available to a person who has established eligibility for such a visa, there is no delay on this account. (See Sections 7.4.2 and 7.4.3 for discussion of the factors determining the availability of immigrant visa numbers.) If a visa number is not immediately available to an alien who has established eligibility for an immigrant visa, the alien is assigned a "priority date." Information about priority dates is available in a publication called the *Visa Office Bulletin*. These two topics, the priority date and the *Visa Office Bulletin*, are discussed below.

7.8.2.1. *Priority date.* The priority date is the date on which the alien is considered to have entered the waiting line for a visa number. The priority date is either (1) the date on which a labor certification application is accepted by the local office of the State Employment Service for processing, or (2) the date on which an applicant files the documents which eventually satisfy a consular officer that he is eligible for labor certification under Schedule A or is not subject to the labor certification requirement, or (3) the date on which an alien or a petitioner on the alien's behalf files with INS an eventually approved application for labor certification under Schedule A, a preference petition, and/or application for adjustment of status, whichever is earliest. [8 CFR 245.1(g)(2)]

7.8.2.2. Visa Office Bulletin. The *Visa Office Bulletin* is a monthly publication in which the Visa Office of the Department of State provides information about the availability of immigrant visas for natives of the various independent countries and dependent areas, and for each preference category. In early 1981, for example, the *Visa Office Bulletin* showed that the first through fourth preference categories were current and for most countries the fifth and sixth preference categories were oversubscribed. For China, the first preference was current, and applicants for second preference with a priority date prior to October 1980 were eligible to obtain immigrant visas. In the third preference for China, the priority date was April 1980, while the priority dates for the fourth, fifth, and sixth preferences were December 1978, July 1976, and August 1979, respectively.

Individuals can be placed on the mailing list to receive the *Visa Office Bulletin* by sending a request to the Visa Office, U.S. Department of State, Washington, DC 20025. There is no charge for receiving the *Bulletin*.

7.8.3. ***Problems caused by delays.*** Since processing of applications can take up to a year or more in some cases, and since an immigrant visa may not be immediately available even after processing is completed, employers may find themselves confronting difficulties when they have offered employment to an alien who is abroad and whom they need to have in the U.S. for employment within a few months. Careful planning and a knowledge of the delays involved are necessary to avoid these situations. In some cases, it may be possible for the employer to offer the alien temporary rather than permanent employment and to bring him to the U.S. in a nonimmigrant status, such as H-1, which might be obtained much more quickly than immigrant status.

7.9 Summary and Examples

7.9.1. ***The basic steps in obtaining immigrant status.*** The two basic steps involved in obtaining immigrant status are (1) establishing one's qualifications for a

particular immigrant classification, and (2) applying for an immigrant visa at an American consular post abroad and entering the U.S. as an immigrant, or applying from within the U.S. for adjustment of status to that of a permanent resident.

An alien establishes his qualifications for immigrant status as an immediate relative or a family member of a U.S. citizen or permanent resident on the basis of an approved petition filed on Form I-130. No labor certification is required. He establishes his eligibility for third or sixth preference classification on the basis of an approved petition filed on Form I-140. Labor certification is required. Eligibilty for nonpreference status is established on the basis of an approved labor certification or qualification for exemption from that requirement. Once an alien has established his eligibility for a particular immigrant classification by one of these procedures, he has passed the major obstacle to obtaining immigrant status.

Having established his eligibility for a particular immigrant classification, an alien is ready to take the second basic step, that of applying for an immigrant visa abroad and entering the U.S. as an immigrant or applying from within the U.S. for adjustment of status to that of a permanent resident. If an immigrant visa number is immediately available to him, he may apply for an immigrant visa or adjustment of status immediately. If an immigrant visa is not immediately available, he may place his name on a consular waiting list so that he can apply for an immigrant visa when one is available. If he is already in the U.S., he must either maintain a valid nonimmigrant status (if that is permitted by INS), or request extended voluntary departure status from INS, or leave the U.S. to await visa availability. In those cases where the waiting period is expected to be brief, satisfactory arrangements can frequently be made with INS to allow the alien to remain in the U.S. In cases where an extended waiting period is expected, it is unlikely that such arrangements can be made.

7.9.2. ***Examples.*** Some examples of typical cases involving various aspects of each of the two steps may serve to clarify the procedures involved.

Example 1. The University of X wishes to appoint a German citizen residing in Germany who was born in Austria to a permanent teaching faculty position. He is highly qualified for the position, but he is not "of exceptional ability in the sciences or arts" so that he could qualify for the labor certification under Schedule A, Group II. Therefore, the first phase of step one, qualifying for a particular immigrant classification, is for the University of X to apply to its local State Employment Service on Form ETA 750, with the necessary documentation attached, for an individual labor certification. If the labor certification is approved, the university consults the *Visa Office Bulletin* to determine whether nonpreference visa numbers for Austria (the place of the alien's birth) are available. If they are available, the alien can immediately apply at an American consular post in Germany for a nonpreference immigrant visa. If nonpreference immigrant visas are not immediately available for Austria, the university would petition for third or sixth preference classification (depending on visa availability) by filing Form I-140 with labor certification attached, with the INS office having jurisdiction over its area. If the preference petition is approved, and if third or sixth preference visa numbers are immediately available for Austria, the prospective faculty member can immediately apply for a third or sixth preference immigrant visa at an American consular post in Germany and can enter the U.S. as an immigrant as soon as his visa applications can be processed and visa issued.

Example 2. An F-1 student who was born in Bangladesh is on practical training at the University of Y after completing his Ph.D. degree at the University of Z. The University of Y wants to appoint him to a permanent research position. The university applies for an individual labor certification in the same manner as in Example 1. Assuming that nonpreference visas are not immediately available, the university must then petition for third preference classification for him by filing Form I-140 with labor certification attached, with the INS office having jurisdiction over its area. If third preference visa numbers for Bangladesh are immediately available, the Bangladesh student should file an application for adjustment of status on Form I-485 simultaneously with the filing of the preference petition. By filing the adjustment application at the earliest possible time, simultaneously with the preference petition, he does not risk disqualifying himself from eligibility for adjustment of status by working without authorization after his period of authorized practical training has expired. If all documents are in order, he can apply for one-step processing and receive employment authorization immedi tely.

Example 3. A J-1 Exchange Visitor from Argentina is offered a permanent position by the University of D. The alien is a college teacher of physics in Argentina, so he is subject to the two-year home country residence requirement of Section 212(e) of the Act by virtue of the Exchange Visitor Skills List. He is married to a citizen of Argentina and has a child who was born in the U.S. and is, therefore, a U.S. citizen. The child is afflicted with a rare disease requiring sophisticated medical treatment. The alien applies to INS on Form I-612 for a waiver of the two-year home country residence requirement on the basis of exceptional hardship to his U.S. citizen child, documenting his contention that the medical treatment needed by the child is not available in Argentina. Since the U.S. citizen child is not 21 years of age, the Argentine citizen is not eligible for immediate relative or preference status on the basis of his relationship to the child. While the waiver application is being processed, the University of D applies for an individual labor certification for the alien by filing Form ETA 750 and supporting documentation

with the local office of the State Employment Service. If the waiver and the labor certification are granted, the alien may immediately submit a third preference petition and an application for adjustment of status for one-step processing.

7.10 Immigrant Documentation

7.10.1. ***Alien Registration Receipt Card.*** When an alien enters the U.S. as an immigrant or is granted immigrant status through the adjustment of status process, he is issued an Alien Registration Receipt Card, Form I-551 (formerly Form I-151). This is a laminated rectangular card 2⅛" by 3½" in size. It is commonly known as the "green card," although the current edition is white with wavy salmon stripes (and other colors have been used). The immigrant alien is required by law to carry the "green card" at all times. [Act 264(e)]

7.10.2. ***Alien Address Reports.*** Even after an alien has achieved status as a permanent resident of the U.S., he must comply with certain requirements imposed on all aliens. One such requirement is submitting the Alien Address Report, Form I-53, to INS each year during the month of January. The form may be obtained from any INS office or U.S. post office. The immigrant alien must also submit the Alien's Change of Address Card, Form AR-11, to INS any time he changes his address. Both of these requirements apply until the alien becomes a naturalized U.S. citizen. [Act 265, 8 CFR 265.11]

7.11 Absence from the U.S.

7.11.1. ***Absence of under one year.*** If the immigrant alien travels outside the U.S. and returns within one year, and if he has not abandoned his U.S. residence, he may be readmitted to the U.S. by presenting his Alien Registration Receipt Card to the immigration inspector at the port of entry, provided he is otherwise eligible for admission. [8 CFR 211.1(b)(1)]

7.11.2. ***Absence of one year to two years.*** If an immigrant alien plans to be outside the U.S. for more than one year but less than two years, he should apply to INS on Form I-131 for a reentry permit. This application should be made before departure from the U.S. [8 CFR 223]. A reentry permit is initially valid for a period of one year and may be extended for one additional year by application to an INS office or a consular office abroad. A reentry permit may be used as a travel document in lieu of a passport if the immigrant is unable or unwilling to obtain a valid passport from the country of his citizenship.

7.11.3. ***Travel in Communist countries.*** Until April 1977, immigrant aliens were restricted from visiting Communist countries unless they had prior approval from the Secretary of State. These restrictions were lifted in April 1977, and immigrant aliens now have the same privileges as U.S. citizens to travel to Communist countries. [*Federal Register* notice of April 14, 1977, revising 8 CFR 211.1, 223a.3, and 223a.5]

7.12 Naturalization

An immigrant alien is not required to become a U.S. citizen at any time, and he may retain his U.S. permanent resident status and foreign citizenship for an indefinite length of time. However, if he elects to apply for naturalization, he is eligible to do so only after having lived in the U.S. as a permanent resident for a period of at least five years (or for a period of three years if he has been married to a U.S. citizen for three years). Forms for applying for naturalization are available from INS.

7.13 Declaration of Intention

A permanent resident alien may find it necessary, in certain cases, to file a Declaration of Intention (to become a citizen). He does so by completing Form N-315 and filing it, with proof of permanent resident status, with INS. The Declaration of Intention is not a requirement for naturalization or for maintaining immigrant status. It is needed only for licensing or certification for some occupations in some states. The filing of the declaration does not obligate the permanent resident to apply for U.S. citizenship. Once filed, the declaration is valid for the duration of the alien's permanent resident status.

SECTION 8
SPECIAL TOPICS

8.1 Introduction

This section of the *Manual* deals with a variety of topics that will be of interest to foreign student advisers requiring knowledge of technical aspects of immigration law and procedure, and to those who work with foreign students and scholars whose home countries undergo radical political changes during their absence, giving rise to an interest in remaining in the U.S.

Among the topics covered in this section are: definitions of terms; procedures that can be followed when seeking reversals of adverse INS decisions; deportation; exclusion; and refugees and asylum.

8.2 Definitions

8.2.1. ***Inspection.*** The process wherein INS personnel at ports of entry examine the documents presented by aliens and question them to determine whether, under pertinent laws and regulations, they qualify to be admitted.

8.2.2. ***Admission.*** Legal entry into the U.S., following inspection by an immigration officer at the port of entry.

8.2.3. ***Deferred inspection.*** The process of an alien having inspection and admission postponed, because of contradictions within his documentation, e.g., an alien showing a Form I-20 from a school different from the school marked in his F-1 visa. The alien is given a Form I-546 and ordered to report to a designated INS office by a specified time, usually 15 days. This procedure is different from the issuance of a Form I-515, "Notice to Student or Exchange Visitor." The Form I-515 is issued when the alien is missing the Form I-20 or the Form IAP-66 and can convince the INS inspector that there is a good reason (e.g., a postal strike) why he does not have that form. Such aliens *are* admitted to the U.S. and are given 30 days to bring the proper form to the nearest INS office.

8.2.4. ***Exclusion.*** The act of denying admission to the U.S. to an alien for reasons set forth in Act 212 (a). The 33 grounds for excludability given in the Act include past convictions for criminal acts, misrepresentations given in applying for a visa, illiteracy, and membership in a Communist party. Waivers of excludability can be granted [8 CFR 2.2.7] and frequently are, to members of Communist parties who are entering as nonimmigrants; waivers are also available for other grounds that might be pertinent to students and scholars (e.g., some criminal convictions, health conditions).

8.2.5. ***Parole.*** Allowing into the U.S. an alien who might not be eligible for admission in any other way. At its discretion, the INS may "parole in" an alien who, for example, is not admissible in any regular nonimmigrant category. The Refugee Act of 1980 sharply limited the authority of the Attorney General to parole persons into the U.S. Section 212 (d)(5) of the Act was amended by addition of the following statement: "The Attorney General may not parole into the U.S. an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the U.S. rather than be admitted as a refugee under Section 207." This clause was invoked on behalf of the Cuban and Haitian boat entrants of 1980, but only after a presidential decision.

8.2.6. ***Private bill.*** Congressional legislation which would exempt an individual from one or more of the requirements of the immigration and nationality laws, or confer upon him a benefit for which he would not otherwise be eligible under those laws. Most of these bills are introduced to confer permanent residence on aliens who came to the U.S. as nonimmigrants but who are no longer in lawful nonimmigrant status. Private bills rarely pass except in cases involving such things as hardship to American citizen members of an alien's family. Introduction of a private bill in the House of Representatives does not, in practice, stay any deportation action unless the Immigration Subcommittee requests a report on the case from the INS; introduction of a private bill in the Senate does stay such action.

8.3 Appeals and Reconsideration

8.3.1. ***General discussion.*** The denial by an immigration officer of an application involving a nonimmigrant need not be accepted as final or absolute. The first recourse when an application has been denied is often an informal appeal, wherein the immigration officer responsible for the denial is presented with *new information* that might lead to a favorable decision. A denial may be appealed in some cases to the Regional Commissioner of INS. Some decisions, however, are not appealable, e.g., extension of stay, application to transfer, and application for permission to accept or continue employment. Whether an appeal is submitted or not, any decision on an application or petition may be reopened or reconsidered by the officer who made the decision. In some limited circumstances, an entirely new application accompanied by new documentation might be submitted.

"Appeal" denotes a review of a decision by a higher level office of the INS. "Reconsideration" refers to review at the same office that rendered the initial decision. The availability of these remedies, together with an outline of procedures to be followed, are set forth below with respect to the particular type of application involved.

8.3.2. ***Adverse decisions from which there is recourse.***

8.3.2.1. *Application for a nonimmigrant visa at an American embassy or consulate.* (INS personnel have no involvement in the issuance of visas.) Prospective foreign students and scholars sometimes have difficulty in obtaining visas; therefore, some comments about steps that can be taken when visa issuance is a problem are included here.

By specific statutory provision, a consular officer has the ultimate authority to determine whether a visa will be issued, and the applicant has no statutory or constitutional right to review or appeal. [Act 104 (a) and 221] Nevertheless, informal provisions for review of a consular officer's determination have been established by regulation. [22 CFR 41.130] Thus, an alien who is denied a visa must be advised of the specific reasons for the denial and is given an opportunity to present evidence to overcome the stated objections. The principal consular officer at the post, or his delegate, may review the denial in certain instances, and either grant or deny the visa or refer the matter to the Visa Office of the Department of State for an advisory opinion. The regulations provide that the Visa Office may itself initiate the review of the denial of a visa. In practice, this will happen only if the applicant himself or an interested party, such as the foreign student adviser, requests such a review by the Visa Office. But the Visa Office's opinion is binding upon the consular officer only with respect to interpretations of law, rather than application of the law to the facts of a given case.

8.3.2.2. *Arrival at the port of entry.* Issuance to an alien of a nonimmigrant visa does not guarantee his admission to the U.S. The question of his eligibility to enter the U.S. may be considered anew when he arrives at the port of entry. [Act 235 and 236] If the inspecting officers believe the alien inadmissible to the U.S., the alien may request a hearing before an Immigration Judge, who will rule on the alien's admissibility. If, however, the alien is ruled excludable (see Section 8.2.4) at such a hearing, he will be statutorily barred from entry into the U.S. for one year. Either the alien or the INS may appeal the judge's decision to the Board of Immigration Appeals. [8 CFR 236.5] If certain documents are lacking, the immigration officer at the port of entry may grant the alien "deferred inspection" (see Section 8.2.3).

8.3.2.3. *Extensions of stay, permission to accept employment, and permission to transfer schools.* Requests for all these are considered at INS offices. Neither the statute nor the regulations provide for an appeal from denial of these applications. The applicant's only formal avenue for review is by means of a "motion to reopen" or a "motion for reconsideration." No special form is required to submit either such motion; it may be in the form of a letter. The letter should be written by the foreign student, with possible help and supporting documentation from the foreign student adviser; the letter should be titled "motion to reopen" or "motion for reconsideration." No fee is required for either such motion if application for the benefit involved had been filed on Form I-538 or Form IAP-66. [8 CFR 103.7]

The district director's denial will give the reasons for his decision, usually by means of checked boxes on Form I-541. Motions to reopen should be founded on new factual evidence not presented earlier, along with an explanation of why these facts had not been offered initially. Motions to reconsider are normally based on the interpretation of legal decisions and precedent rulings that have some bearing on the case at hand. [8 CFR 103.5] In actual practice, there are few sharp distinctions between these two kinds of motions.

Note: The filing of a motion to reopen or reconsider does *not* serve to stay the execution of any decision made in the case or to extend a previously set departure date [8 CFR 103.5]; the filing of an *appeal does* serve to postpone such actions.

8.3.2.4. *Petitions for certain nonimmigrant classifications.* As noted in Sections 5 and 6, aliens may not be classified as temporary workers (H-1, H-2, and H-3), fiancees or fiances of American citizens (K-1), or as intracompany transferees (L-1) in the absence of approval of a nonimmigrant visa petition. Such petitions are considered by district directors whose adverse decisions may be appealed to the appropriate Regional Commissioners. [8 CFR 214.2 (h)(6), 214.2 (k), 214.2 (L) (1), and 103.1 (e) (11)] Notices of appeal must be

filed on Form I-290B (Notice of Appeal to Regional Commissioner) together with a filing fee within 15 days of the date of denial. The 15-day period may be extended if prior leave to file late is granted by INS. Although directed to the Regional Commissioner, the appeal is actually mailed to the district director. Briefs may be attached stating the reasons that the decision should be reversed; oral argument before the Regional Commissioner may be requested when filing the notice of appeal. [8 CFR 103.3 (c)]

8.3.2.5. *Change of nonimmigrant classification.* Denial by the district director of an application to change from one nonimmigrant classification to another may be appealed to the Regional Commissioner. The appeal is filed on Form I-290B with the district director within 15 days of the date of denial together with a filing fee and, if desired, request for a personal appearance for oral argument. Briefs may be submitted in support of the appeal and requests for time to file such briefs may be granted either by the district director or the Regional Commissioner.

8.3.3. ***Procedural notes.***

8.3.3.1. *Missing the notice of appeal deadline.* If the 15-day filing deadline for notice of appeal is missed, the applicant still has some alternatives. He may file a motion for reconsideration with the district director, asking the district director, in effect, to reverse his own decision. Such a motion is not likely to succeed unless the applicant is able to submit additional significant evidence the district director has not previously considered. However, denial by a district director of a motion to reconsider is appealable if the decision on the application or petition itself was appealable.

8.3.3.2. *Certification.* Certification is a process by which a district director may ask a higher level official to review a decision he has made. A decision may be certified to a higher level when the alien has no right to appeal, or the district director may choose to certify the decision even if the applicant has a right of appeal. Generally, an INS official will certify a decision only when the decision involves a unique or unprecedented application or interpretation of the law. [8 CFR 103.4] When a case has been certified, the alien or other party affected will be given an opportunity to submit a brief upon the issues presented.

8.4 Deportation

8.4.1. ***General discussion.*** This section describes the provisions of law related to the deportation of aliens from the U.S., especially those grounds of deportability which are likely to be of concern to foreign students and scholars.

Particular care should be taken in responding to students' inquiries concerning deportability, as the issues presented frequently involve highly technical interpretations not only of the Act itself, but also of state criminal statutes and statutes involving such subjects as marriage and divorce.

Moreover, deportation has a particular legal meaning and has particular legal implications. For example, not every alien who is subject to deportation is actually deported. An alien can be deported only after a formal hearing, conducted in accordance with certain procedural requirements before an Immigration Judge. More often than not, an alien who is deportable will be permitted by immigration authorities to leave the U.S. on a voluntary departure basis without the institution of formal deportation proceedings.

Likewise, the concept of deportation should not be confused with that of exclusion, although the two sometimes overlap. Deportation involves the expulsion of aliens who have gained entry into the U.S. Exclusion, on the other hand, involves denying an alien legal admission into the country.

The following information, therefore, is intended only as the barest reference to those provisions of law concerned with deportation.

8.4.2. ***Grounds for deportation.***

8.4.2.1. *Failure to comply with conditions of nonimmigrant status.* Since all nonimmigrants are admitted on a temporary basis for the purpose of accomplishing a particular objective, an alien's failure to leave after the objective has been accomplished may result in a finding of deportability. [Act 241 (a) (9)] A student's failure to attend classes, for example, or his acceptance of unauthorized employment, or failure to obtain timely extensions of stay are violations of the conditions upon which he is permitted to remain in the U.S. Willful failure by a nonimmigrant to provide full and truthful information requested by INS (regardless of whether the information was material) constitutes a failure to maintain nonimmigrant status. [8 CFR 214.1 (f)] Also, a nonimmigrant's conviction in the U.S. for a crime of violence for which a sentence of more than one-year imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status. [8 CFR 214.1 (g)]

A failure to maintain status subjects a nonimmigrant to deportation, but immigration officials do not always institute deportation proceedings under such circumstances. Furthermore, INS may reinstate the alien to nonimmigrant status (for reinstatement to student status, see Section 3.10) and permit him to remain in the U.S. provided the violations do not continue, particularly if the violations were not substantive or willful and are excusable.

8.4.2.2. *Conviction of crime after entry.* Any alien is subject to deportation for the conviction of certain offenses after his entry into the U.S. Generally, conviction for those crimes described as involving moral turpitude or conviction for crimes related to narcotics, drugs, or marijuana are deportable offenses.

An alien who is convicted after entry of only one crime involving moral turpitude will not be deported unless the crime was committed within five years of entry and he is sentenced to confinement for a year or more. However, an alien who is convicted of two separately planned and executed crimes involving moral turpitude may be deported no matter how long after his entry the crimes are committed and without regard to the severity of the sentence. The felony/misdemeanor distinction is not relevant in either instance. Of particular importance is conviction of the crime of mere possession of marijuana. Though such an offense may not be viewed as a serious one in other circumstances, it has dire consequences for the alien and is a deportable offense no matter how long the alien may have lived here, no matter how long after arrival the crime was committed, and no matter what relatives the alien may have in this country. While there are ameliorative provisions in the Act by which an alien convicted of much more serious crimes may avoid deportation, there is none for the alien convicted of a narcotics or marijuana offense, no matter how minimal the conviction might seem to be.

Conviction of crimes other than those involving moral turpitude or narcotics, may, in certain limited circumstances, render a nonimmigrant deportable. For example, serving a sentence for a crime, regardless of its particular nature, may prevent a foreign student from attending classes and thereby result indirectly in a finding that he has failed to comply with one of the conditions of admission. Thus, it is the failure to comply with the conditions of his nonimmigrant status rather than commission of the crime which can lead to a finding of deportability. Otherwise, commission of relatively minor crimes will not ordinarily affect the duration of a nonimmigrant's stay.

Important legal concepts and interpretations are involved with respect to the meaning of such terms as "moral turpitude"; determinations of when an alien made an "entry"; what constitutes a conviction; the effect of state or federal statutes permitting the expungement of criminal convictions; and provisions for relief from actual deportation. It is extremely important when such issues are presented that the foreign student have competent legal advice.

8.4.2.3. *Other grounds for deportation.* Some other grounds for deportability, briefly described, are these:

1. Unlawful entry [Act 241 (a) (1) and 212 (a)]: Many aliens manage to enter the U.S. even though they are not legally entitled to do so. When the illegality of the entry is discovered, the alien may be deported. Some examples are aliens who enter surreptitiously and avoid inspection by immigration officers [Act 241 (a) (2)]; those who gain entry by fraudulently misrepresenting or concealing facts which might otherwise have prohibited their admission; those who entered without valid documents, such as an invalid visa or labor certification; those who have been convicted of certain crimes prior to their arrival; aliens having certain contagious diseases or physical or mental disabilities; aliens who once left the U.S. to avoid military service; and aliens who have previously been deported and do not have permission to return.

2. Membership in the Communist party and other proscribed organizations, either before or after entry. [Act 241 (a) (6); 241 (a)(1) and 212(a)(28)]

3. Institutionalization at public expense, or under limited circumstances, becoming a public charge. [Act 241 (a)(3) and (8)]

4. Being a narcotic drug addict: Although the provision is rarely enforced, an alien may be deported upon a finding that he is an addict even though he may never have been convicted of a crime associated with narcotics. [Act 241 (a)(11)]

5. Being a prostitute or being connected with the practice of prostitution. Theoretically, the fact that prostitution may not be a crime where practiced has no effect on the alien's deportability. [Act 241(a)(12)]

6. Being an alien who, for gain, has assisted other aliens to enter the U.S. illegally. [Act 241 (a)(13) and 241 (a)(1) and 212(a)(31)]

8.4.3. ***Deportation procedures.*** [Act 242; 8 CFR 242] Deportation proceedings are instituted by issuance of a document called an Order to Show Cause and Notice of Hearing. The document is designed to notify the alien of the grounds upon which the finding of deportability will be sought and to advise him of the time and place of his deportation hearing.

The hearing itself is subject to the constitutional requirement for a fair hearing, meaning that the alien has the right to representation of counsel (although not at government expense), the right to cross-examine witnesses, to present evidence in his own behalf, and certain other procedural rights.

It is important for foreign students to know also that they have certain rights prior to the hearing itself. For example, they have the protection of the Fourth Amendment's prohibition against unreasonable searches and seizures (the Sandoval ruling does permit INS, however, to use evidence found in an unreasonable search in a deportation hearing); in the opinion of some lawyers, they need not answer the questions of an immigration officer (although in certain circumstances they may be taken into custody for refusing to answer such questioning); and they may have a lawyer present at all stages of the investigatory process.

The deportation hearing is conducted by an Immigration Judge (formerly called a Special Inquiry Officer). His determination of deportability, as well as issues involving relief from deportation (see Section 8.4.4), is appealable to the Board of Immigration Appeals. And, in certain circumstances, an adverse ruling by the Board may be reviewed in the U.S. Court of Appeals. [Act 106 (a)]

8.4.4. ***Relief from deportation.*** As a part of the deportation hearing itself, an alien who is found to be deportable may avoid the impact of actual deportation by qualifying for certain ameliorative provisions of the law. [8 CFR 242.17] Thus, deportable aliens may be granted adjustment of status [Act 245]; suspension of deportation [Act 244], which is another way of acquiring permanent residence for certain aliens who have been physically present in the U.S. for a continuous period of seven years and whose deportation would result in extreme hardship to him or to certain members of his family (the required period is extended to 10 years in some circumstances); and registry, a method of acquiring permanent residence for aliens who have lived in the U.S. illegally since prior to June 30, 1948. [Act 249] An alien who is deportable on specific grounds, often relating to illegal entry by fraud or commission of crimes prior to entry, may be eligible for a waiver removing the specific ground as a basis for deportation if he has certain specified close relatives who are U.S. citizens or lawful permanent residents. [Act 212 (g), (h) and (i)]

An Immigration judge may withhold the deportation of an alien on a temporary basis if, in the judge's opinion, the alien would be subject to persecution on account of race, religion, or political opinion in the country to which his deportation has been ordered. [Act 243(h) and United Nations Convention Relating to the Status of Refugees]

Finally, if no other relief from deportation is available, the Immigration Judge may, in most cases, grant the alien the privilege of voluntary departure, in lieu of being deported. Although voluntary departure is really an enforced departure, it permits the alien to avoid the stigma associated with being deported. Voluntary departure is also preferable for a more practical reason. An alien who is deported is ineligible for readmission to the U.S. unless he first secures INS permission to return. There is no such restriction upon the alien who leaves on a voluntary departure basis. Furthermore, an alien under voluntary departure has the additional advantage of being able to request delays of the departure date (for substantial reasons). To be eligible for voluntary departure, the alien must be of good moral character and be able to pay his way home.

8.5 Some Technical Matters

8.5.1. ***Waiver of grounds of inadmissibility under Section 212 (d) (3) of the Act.*** For foreign students or scholars who are members of Communist party-affiliated organizations or are members of the Communist party in a non-Communist country, a waiver of inadmissibility may be required because such persons are ordinarily excludable from the U.S. Such a waiver may be granted under authority given the Secretary of State and the Attorney General for nonimmigrants by Section 212 (d)(3) of the Act. Persons from Communist countries who are not members of the Communist party do not require waivers of excludability.

Section 212 of the Act enumerates the grounds on which an alien is considered to be ineligible for a visa or for admission to the U.S. Section 212(d)(3)(A) of the Act provides that the Attorney General, upon a favorable recommendation from the Secretary of State, may declare that the alien will be admitted temporarily as a nonimmigrant in spite of his inadmissibility. This waiver of grounds of inadmissibility is indicated on the nonimmigrant alien's visa and Form I-94 by the notation "212(d)(3)(A)(28)," which means that the waiver under Section 212(d)(3)(A) was granted for a condition existing under Section 212(a)(28) having to do with anarchists, members of a Communist party, and persons who advocate violent revolution. When such a notation appears on the visa and Form I-94, the nonimmigrant alien must secure another waiver of grounds of inadmissibility if he should go outside the U.S. and reenter. The foreign student adviser can assist such an alien by consulting the appropriate area desk of the Department of State in advance of such a trip to arrange for the approval of the waiver and issuance of the visa.

8.5.2. ***SPLEX and CHINEX.*** Advisers will sometimes find the designation "SPLEX" written on a nonimmigrant's visa and Form I-94. That designation stands for "Special Exchange Program" and refers to nonimmigrants from Soviet bloc countries who come to the U.S. under the special exchange agreements negotiated with those countries. All nationals of Soviet bloc countries who come to the U.S. for educational or cultural exchange purposes are designated SPLEX.

Since 1978 some students and scholars from the People's Republic of China in scientific and technical fields and/or who are sponsored by their government have been given the designation of "CHINEX" on their visas and Forms I-94. This notation is parallel to that of "SPLEX."

The principal thing which the adviser needs to keep in mind regarding SPLEX and CHINEX aliens is that an authorization must be received from the Department of State before an extension of stay can be granted by INS. An adviser who is assisting a SPLEX or CHINEX alien in obtaining an extension of stay should, in addition to the usual procedures described in the appropriate sections of this *Manual*, write to the appropriate country officer (e.g., Hungarian or Soviet Desk), Office of European Affairs, or the Office of Chinese Affairs, Department of State, Washington, DC 20520, explaining the purpose of the extension and providing a copy of the Form I-538, IAP-66, or other supporting document issued for the extension. If the Department of State has no objection to the extension of stay, the appropriate desk officer will provide a letter to that effect. The letter must be submitted to INS along with the other usual documents in applying for extension of stay.

8.6 Refugees and Asylum

8.6.1. ***General discussion.*** The Refugee Act of 1980 (PL 96-212) became effective on April 1, 1980, and brought about major changes in definitions, restrictions, allocations, and procedures in this area of immigration law. The sections that follow describe the provisions of the Refugee Act that are most likely to be relevant to foreign students and scholars in the U.S.

8.6.2. ***Definition of refugee.*** According to Section 101 (a)(42) of the Act, The term "refugee" means any person "who is unable or unwilling to return [to that person's country of nationality or country of habitual residence] . . .because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. . . ." This brings the U.S. definition of a refugee into agreement with that in the United Nations Protocol on Refugees, to which the U.S. is a signatory.

8.6.2.1. *Restrictions.* There are no longer any geographical or ideological restrictions on refugee eligibility since Section 203 (a)(7) of the Act (seventh preference) was repealed by the Refugee Act of 1980. However, a new provision, Section 101 (a)(42)(B) prohibits the granting of refugee status to any person who has himself engaged in the persecution of others. Any person deemed to be "firmly resettled" in a third country, e.g., having status equivalent to permanent residence in that third country, is also denied access to refugee status. [8 CFR 207.1(b)]

8.6.2.2. *Distinction between refugees and asylum applicants.* The law now clearly differentiates between *refugees* and *asylum applicants.* The term "refugee" is new. Under Section 207 of the Act, it is limited to aliens outside the U.S. (usually in a third country, but in "special circumstances" they may still be located in the country of nationality and persecution); a new Section 208 refers to aliens in the U.S. or at a U.S. port of entry as "asylum applicants" if they meet the persecution criteria described above.

8.6.2.3. *Certain grounds of excludability waived.* Refugees and asylum applicants are not subject to the following provisions of Section 212 (a) of the Act which would otherwise render them inadmissible to the U.S.: (14)labor certification requirement; (15) public charge provision; (20) and (21) visa validity requirements; (25) literacy requirement; (32) prohibition against foreign medical graduates. Other grounds found in Section 212 (a) may be waived by the Attorney General for "humanitarian purposes, to assure family unity, or when it is otherwise in the public interest" *except for* (27), (29), and (33), relating to potential spies or saboteurs and former Nazis, and that part of (23) relating to traffickers in narcotics. [Act 209 (c)]

8.6.2.4. *Application for refugee status.* Aliens may file for refugee status with any U.S. consul. The consul will accept the application, complete initial processing of the applicant and cable the INS office having jurisdiction over that particular U.S. consul, requesting a file number and an INS officer to interview the applicant.

8.6.2.5. *Application for asylum.* An application for asylum is made on Form I-589, which is available at any INS office. There is need for substantive documentation of the persecution claim, consisting of documentation of political conditions in the persecuting country (in the case of some countries, the Department of State may already have sufficient documentation) and specific documentation as to why the applicant would be targeted for persecution. The ultimate decision on the granting of asylum is made by the district director, but invariably an advisory opinion is sought from the Department of State, the judgment of which is almost always followed. Asylum status may be terminated by the Attorney General if he finds there is a change in circumstances in the alien's country of nationality or, in the case of stateless persons, in the country in which such person last habitually resided.

8.6.3. ***Refugee quotas.*** Section 207 permits a normal flow of 50,000 refugees who can be admitted into the U.S. for fiscal years 1980, 1981, and 1982. Thereafter the annual limit will be determined in advance by the President after consultation with Congress. In Section 207(b) there is provision for exceeding the foregoing limits; they may be increased by the President as the result of his determination, after appropriate consultation, that an unforeseen emergency exists, that the admission of certain refugees is justified by grave humanitarian concerns or is otherwise in the national interest, and that their admission cannot be accomplished in accordance with the numerical limits set for that fiscal year. On the other hand, the authority of the Attorney General to *parole* aliens into the U.S. who could have proceeded through the prescribed refugee application channels has been sharply limited by Section 212 (d)(5) which permits such action only when there are "compelling reasons in the public interest with respect to that particular alien. . . ."

8.6.3.1. *Elimination of seventh preference and resulting change in overall ceiling on visa numbers.* With the repeal of Section 203 (a)(7) of the Act there is no longer a seventh preference category. The 6 percent of the total immigrant visa numbers that had been allocated to that category has now been reassigned to second preference. The total number of preference visas available in any fiscal year is reduced from 290,000 to 270,000.

8.6.3.2. *Spouses and children of refugees.* The spouses and unmarried minor children of refugees are entitled to the same admission status if they accompany or follow to join the refugee and are not entitled to admission as refugees in their own right. [Act 207 (c)(2)]

8.6.4. ***Length of time for adjustment to permanent residence.*** Neither aliens who enter as refugees nor those who are granted asylum are immediately given the status of lawful permanent resident. Instead, Section 209 provides for the adjustment of status after *one year's* physical presence in the U.S. Admission for lawful permanent residence will be recorded as of the date of the refugee's arrival in the U.S. In the case of an individual seeking asylum, permanent resident status is made retroactive to a date one year before the approval of the application for adjustment of status. The number of people granted asylum who will be permitted to adjust to permanent residence in any one fiscal year is limited to 5,000. [Act 209 (a)(2)(b)]

APPENDIX 1

FEE SCHEDULE

Form I-102	"Application by Nonimmigrant Alien for Replacement of Arrival Document." $5.
Form I-129B	"Petition to Classify Nonimmigrant as Temporary Worker or Trainee or as Intracompany Transferee." $15.
Form I-130	"Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa." $10.
Form I-140	"Petition to Classify Preference Status of Alien on Basis of Profession or Occupation." $25.
Form I-485	"Application for Status as Permanent Resident." $30.
Form I-506	"Application for Change of Nonimmigrant Status." $10.
Form I-539	"Application to Extend Time of Temporary Stay." $5.

APPENDIX 2

IMMIGRATION FORMS MOST OFTEN USED

Among the many forms prescribed for use by the Immigration and Naturalization Service in 8CFR 299.1 and 332a.2 the following may have greater applicability to the documentation required of educational institutions and their foreign students and faculty:

AR-4	Alien Registration Fingerprint Chart
AR-11	Alien's Change of Address Card
ETA-750	Application for Alien Employment Certification (replaces MA7-50A & B)
G-325	Biographic Information
I-17	Petition for Approval of School for Attendance by Nonimmigrant Alien Students
I-20	Certificate of Eligibility (for nonimmigrant F-1 Student status)
I-53	Alien Address Report
I-90	Application by Lawful Permanent Resident Alien for Alien Registration Receipt Card, Form I-551
I-94	Arrival-Departure Record
I-102	Application by Nonimmigrant Alien for Replacement of Arrival Document
I-126	Report of Status by Treaty Trader or Investor
I-129B	Petition to Classify Nonimmigrant as Temporary Worker or Trainee or as Intracompany Transferee
I-129F	Petition to Classify Status of Alien Finance or Financee for Issuance of Nonimmigrant Visa
I-130	Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa
I-131	Application for Issuance or Extension of Permit to Reenter the U.S.
I-134	Affidavit of Support
I-140	Petition to Classify Preference Status of Alien on Basis of Profession or Occupation
I-551	Alien Registration Receipt Card
I-171C	Notice of Approval of Nonimmigrant Visa Petition or of Extension of Stay of H or L Alien
I-181	Memorandum of Creation of Record of Lawful Permanent Residence
I-185	Nonresident Alien Canadian Border Crossing Card
I-186	Nonresident Alien Mexican Border Crossing Card
I-193	Application for Waiver of Passport and/or Visa
I-212	Application for Permission to Re-apply for Admission into the U.S. after Deportation or Removal
I-221	Order to Show Cause and Notice of Hearing
I-290A	Notice of Appeal to the Board of Immigration Appeals
I-290B	Notice of Appeal to Regional Commissioner
I-485	Application for Status as Permanent Resident
I-486A	Medical Examination and Immigration Interview
I-506	Application for Change of Nonimmigrant Status
I-512	Authorization for Parole or Conditional Entry of an Alien into the U.S.
I-538	Application by Nonimmigrant Student (F-1) for Extension of Stay, School Transfer, or Permission to Accept or Continue Employment
I-539	Application to Extend Time of Temporary Stay
I-571	Refugee Travel Document

I-589	Request for Asylum in the United States
I-612	Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the INA, as amended
IAP-37	Exchange Visitor Program Application
IAP-66	Certificate of Eligibility for Exchange Visitor Status
IAP-87	Update of Information on Exchange Visitor Program Sponsor
N-315	Declaration of Intention
N-400	Application to File Petition for Naturalization
N-405	Petition for Naturalization (under general provisions of INA)
N-550	Certificate of Naturalization
N-600	Application for Certificate of Citizenship

APPENDIX 3

SAMPLE FORMS

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U.S. Department of Justice
Immigration and Naturalization Service

Please read instructions on PAGE 4

Certificate of Eligibility for Nonimmigrant (F-1) Student Status

Form Approved
OMB. No. RO397

PAGE 1

This page must be completed and signed in the U.S. by an authorized school official.

010033 B

Name of Student—Family Name (Capital Letters)	Given Name	Middle Name

Date of Birth (Mo., day, year)	Country of Birth	Country of Nationality

Name of School
School Official to be notified of student's arrival in U.S. (Name and Title)
Address of School (Include Zip Code)

Visa Issuing Post

For Immigration Official

1. This certificate is issued to the student named above for (check and fill out as appropriate):
- ☐ Initial attendance at this school.
- ☐ Continued attendance at this school after a temporary absence from the United States, or
- ☐ Use by spouse and/or children in acquiring nonimmigrant F-2 classification.
  The student's authorized stay, as it appears on his/her Form I-94, expires on (date): _____
- ☐ Other (specify): _____

2. The student named above has been accepted for a full course of study at this institution (complete each of the following):
Majoring in the field of _____
The student is expected to report to the school not later than (date) _____, and complete studies not later than (date) _____.

3. Proficiency in the English language ☐ is ☐ is not required (check and fill out as appropriate):
- ☐ The school has determined that the student has the required proficiency.
- ☐ If the student is not yet proficient, he or she will be given instruction consisting of _____.
- ☐ English IS NOT a requirement (explain): _____

4. This school estimates the student's average MONTHLY costs to be the following:

Tuition and fees	$ _____		
Living expenses	$ _____		
Expenses of dependent(s):	$ _____		
Other (specify):	$ _____	TOTAL	$ _____

5. This school has information showing the following as the student's means of support, estimated on a MONTHLY basis:

Personal funds of the student:	$ _____		
Family funds from abroad:	$ _____		
Funds from this school (Specify type): _____	$ _____		
Funds from another source (Specify type/source): _____	$ _____		
On-campus employment, if applicable:	$ _____	TOTAL	$ _____

6. Remarks (complete as appropriate): _____

7. This school is approved by the Immigration and Naturalization Service for attendance by nonimmigrant students (fill out all blanks):
Under the name of (School/School District) _____
Approval was granted on (date) _____ and the school was given the file number of _____.

I CERTIFY under penalty of law that:
All information provided above was completed before I signed this form, and is true and correct to the best of my knowledge;
The school has determined that the above-named student's qualifications meet all standards for admission to the school;
The student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(1a); and
I am a designated official of the above named school and I am authorized to issue this form.

Signature of School Official	Title	Date Issued	Place Issued (city and state)

FORM I-20A (REV. 2/14/81)Y

I-20A School

SAMPLE FORM I-20A

I-20A Student

Please read instructions on PAGE 4

CERTIFICATE BY NONIMMIGRANT STUDENT

Under Section 101 (a) (15) (F) (i) of the Immigration and Nationality Act

1. My full name is: (Family name) (Given name) (Middle name)			**2.** My anticipated stay is (months or years):
3. My educational objective is: (Degree or certificate sought; Major field of study)		**4.** My passport was issued by (country): and the number on it is:	
5. I am financially able to support myself for the entire period of my stay in the United States while pursuing a full course of study, by: (State source and amount of support—Documentary evidence of means of actual support must be attached to this form):			
6. I last attended (Name of school)	(City)	(State)	(Country)
7. My major field of studies was:			**8.** I completed those studies on: (Date)
9. The person most closely related to me who lives OUTSIDE the United States is (Name):	(Relationship):	(Address):	
10. The person most closely related to me who lives IN the United States is: (If you have no relative in the U.S., give the name of a friend.) (Family name): (Given name): (Middle name):	(Relationship):	(Address):	

11. PLEASE READ CAREFULLY, and be sure that you understand the following, before signing below:

A. SCHOOL If I am applying for entry to the United States for the first time after being issued an F-1 visa, I will not be admitted unless I plan to attend the school specified in that visa. If, before I depart for the United States, I decide to attend another school, I will present an I-20 from that school to the issuing Consular office to have that school specified in my visa.

B. EMPLOYMENT I am not permitted to work off-campus or to engage in business unless I have received permission to do so from the Immigration and Naturalization Service. If I require employment, I may apply for permission to work (on Form I-538). My application must be based on financial need arising after receiving student status, or the need to obtain practical training. My alien spouse or child (F-2 Classification) may not work in the United States.

C. PERIOD OF STAY I am permitted to remain in the United States only while maintaining nonimmigrant student status. I must also maintain a passport which is valid for a period of no less than 6 months, unless exempt from passport requirements. I may not stay longer than authorized on my Form I-94, unless I apply to the Immigration and Naturalization Service (On Form I-538) for an extension. To get an extension, I must apply between 15 and 60 days before the date that my authorized stay expires. I may stay while the application is being processed and if it is approved, until the expiration of the extension.

D. NOTICE OF ADDRESS Each year I am in the United States on the first day of January, I must submit, by the 31st day of January, a notice of my address to the Immigration and Naturalization Service. I must also send a notice within 10 days after any change of address. Regardless of whether I move, I must file a notice of my address every 3 months. (The forms to be used to make each of the reports are available at any United States Immigration Office or Post Office.)

E. ARRIVAL/ DEPARTURE When I depart from the United States, I must give my "Arrival-Departure Record" (Form I-94) to a representative of the steamship or airline if I leave via a seaport or airport, to a Canadian Immigration Officer if I leave across the Canadian border, or to a United States Immigration Officer if I leave across the Mexican border. However, I may keep my I-94 for reentering the United States from Mexico or Canada, or from adjacent islands other than Cuba, if I return to the U.S. within 30 days.

F. SCHOOL TRANSFER I may remain in the United States only to pursue a full course of study at a specified school. If, after being admitted, I want to transfer to another school, I must first apply (on Form I-538) and be granted permission to do so. The application must be submitted to the Immigration and Naturalization Service Office having jurisdiction over the school from which I wish to transfer. A Form I-20, completed by the school to which I wish to transfer, must be with my application. My application will be denied if I have not taken a full course of study at the school I was last authorized to attend, unless I establish that failure to do so was beyond my control or was otherwise justified.

G. RE-ENTRY If I want to reenter the United States as a nonimmigrant student, after a temporary absence, I must be in possession of the following: (1) A valid student visa, unless I am exempt from visa requirements; (2) a passport valid for at least 6 months beyond the period of readmission, unless I am exempt from passport requirements; and (3) a current copy of Form I-20A and I-20B. (Only the "A" copy of Form I-20 is required if I am returning from a temporary absence from the United States, to continue studies at the school which the Immigration and Naturalization Service last authorized me to attend.)

H. PENALTY If I do not register at the school named in my "Arrival-Departure Record" (Form I-94), or if I stop attending school, or take less than a full course of study, or accept unauthorized employment, I fail to maintain my status and may be deported from the United States.

I AUTHORIZE the named school, and any school to which I transfer, to release any information from my records which is needed to determine if I am maintaining the lawful status in which I was admitted to the United States. I further authorize the school to report to the Immigration and Naturalization Service if I fail to register within 60 days of the time expected, to carry a full course of study, or to attend classes to the extent required, or if I become employed and/or terminate attendance at the school. The school is authorized to provide the Service with my name, country of birth, current address, and any other directory information on a regular basis or upon request.

I CERTIFY that all information provided on this form refers specifically to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on Page 1 of this form.

I AGREE to comply with the above terms and with any other conditions of my admission, and those of any extension of stay.

Signature of Student		Address (City)	(State or Province)	(Country)	(Date)
Signature of Parent or Guardian If Student is under 18 years of age	(Relationship)	Address (City)	(State or Province)	(Country)	(Date)

MF-I-20A

U.S. Department of Justice
Immigration and Naturalization Service

Notice and Report Concerning Nonimmigrant "F-1" Student

Please read instructions on PAGE 4

010033 **B**

Name of Student–Family Name (Capital Letters)	Given Name	Middle Name

Date of Birth (Mo., day, year)	Country of Birth	Country of Nationality

Name of School
School Official to be notified of student's arrival in U.S. (Name and Title)
Address of School (Include Zip Code)

Visa Issuing Post
For Immigration Official

NOTICE TO THE SCHOOL

The above-named person was admitted to, or authorized to remain in, the United States, for a temporary period as a nonimmigrant student. This action was taken based on verification from your school that the person has been accepted at your school as a full-time student. If any of the circumstances which appear in the following section, "Report by the School" occur, please report them promptly to the Immigration Office having jurisdiction over your school. If you fail to submit any required reports, the Immigration and Naturalization Service may withdraw its approval of your school for attendance by nonimmigrant students.

A student who, on the basis of the recommendation of your school, has been authorized to accept employment for practical training in a field related to his/her course of studies is considered to be in attendance at your school during the authorized period of that employment. Therefore, please submit the report below when the student terminates that practical training.

REPORT BY THE SCHOOL

Please complete this report and mail to the Immigration and Naturalization Service, when appropriate.

SAMPLE FORM I-20B

1. The student (check and fill out as appropriate):

a. ☐ Did not register in person at this school within 60 days of the date expected.
b. ☐ Is carrying less than a full course of study or is attending classes to lesser extent than normally required. (Please mail a photocopy of this report, retain the original in your files, and explain in "Remarks" below.)
c. ☐ Terminated attendance, BEFORE the end of the school term, on (date) _____ (give reason for leaving in "Remarks" below).
d. ☐ Terminated attendance, AT the end of a school term or upon terminating practical training, on (date) _____ (give reason for leaving in "Remarks" below).

2. The student's last known residence address in the United States was: (In care of _____)
Street address _____ Apartment number _____
City or town _____, State _____ Zip Code _____

3. The student departed, or plans to depart, from the United States as follows:
Date of departure _____, Port of departure _____
Name of ship, airline, or transportation company _____

4. The student's permanent residence abroad is: (In care of _____)
Street address _____ Apartment number _____
City or town _____ Province or State _____ Country _____

5. Remarks:

_____
Signature of School Official | Title | Date Issued

I-20B School

FORM I-20B (REV. 2/14/81)Y

School

● INSTRUCTIONS TO THE SCHOOL

The law provides severe penalties for knowingly and willfully falsifying or concealing any material fact in filling out this form.

Failure to comply with 8 CFR 214.3 (k) may subject you and your school to criminal prosecution.

If you issue this form improperly, provide false information, or fail to submit required reports, the Immigration and Naturalization Service may withdraw its approval of your school for attendance by nonimmigrant students.

IT IS YOUR RESPONSIBILITY:

A. **To complete Page 1 (Form I-20A) for any alien you have accepted for a full course of study in your school, if that person**
   1. Intends to apply for admission to the United States as a nonimmigrant under Section 101 (a) (15) (F) (i) of the Immigration and Nationality Act (F-1 Classification).
   2. Is in the United States as an F-1 nonimmigrant and has applied for a transfer to your school; or
   3. Is in the United States and will apply to change his/her nonimmigrant classification to F-1; or
   4. Is in the United States (F-1 or F-2 Classification), and taking a temporary leave of absence from the United States; or
   5. Has a spouse or children who wish to acquire nonimmigrant (F-2) classification. When issuing Form I-20A for the use of a spouse or minor children, the school need not fill in items 2 and 3. The rest of Page 1 should show the name and personal data relating to the student. In this instance, Form I-20B and the carbon interleaf should be destroyed.

B. **To establish that any student to whom you issue this form:**
   1. Is able to pay all expenses incurred (and those of any dependents with the student) while in the United States.
   2. Meets all requirements for admission to your school. If you want assistance in determining the student's proficiency in English, contact the Cultural Affairs Officer at the Embassy of the student's country.

C. **To be sure each Page 1 (Form I-20A) is signed and issued in the United States by an AUTHORIZED OFFICIAL of your school.**

D. **To remove the carbon sheet, and provide the student with all pages of this form.**

E. **To provide the student with a Page 1 (Form I-20A) for dependents to use in acquiring F-2 nonimmigrant status. In this case destroy the other pages of the form.**

F. **To provide the student with a Page 1 (Form I-20A) when leaving the United States for a temporary absence, if the student will be enrolled in your school immediately after reentry. In this case destroy the other pages of the form.**

G. **To retain all evidence which shows the scholastic ability and financial status on which admission was based, as long as the student is attending your school.**

H. **To complete Page 3 (Form I-20B) and forward it to the Immigration and Naturalization Service office with jurisdiction over your school, if the student:**
   1. Does not register for a full course of study; or
   2. Does not maintain a full course of study; or
   3. Does not attend classes often enough to meet the requirements of the school; or
   4. Terminates attendance at your school for any reason.

SAMPLE FORM I-20B

Student

● INSTRUCTIONS TO THE STUDENT

The law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document, in the submission of this form.

Fill in ONLY pages 2 and 5 of this form. Remove and keep page 5 for your records.

IF YOU ARE APPLYING FOR:

A. **Admission to the United States,** give this form (I-20A and I-20B) to the American Consular Office at the time you apply for a visa (unless you are exempt from visa requirements), and to the Immigration Officer when you arrive in the United States. If you are exempt from visa requirements, and are applying for admission to the United States for the first time as an F-1 student, give the Immigration Officer evidence of your ability to support yourself while pursuing a full course of study (see Item 5, Page 2, of I-20A).

B. **Reentry as an F-1 student,** after a temporary absence from the United States, to continue attending the same school, present a current I-20A to the Immigration Inspector at the time of re-entry (see Item 11G, Page 2, of I-20A).

C. **A transfer to another School** (or for a transfer and an extension of stay), mail or bring the following to the office of the Immigration and Naturalization Service having jurisdiction over the school from which you wish to transfer;
   1. Form I-20A and I-20B, "Certificate of Eligibility for Nonimmigrant (F-1) Student Status" (this form); and
   2. Form I-538, "Application by Nonimmigrant Student (F-1) for Extension of Stay, School Transfer or Permission to Accept or Continue Employment"; and
   3. Form I-94, "Arrival-Departure Record". If the I-94 is attached to your passport, remove it. DO NOT SEND YOUR PASSPORT.

D. **Change to Nonimmigrant Student Status,** from any other status, mail or bring the following to the office of the Immigration and Naturalization Service having jurisdiction in the area where you live:
   1. Form I-20A and I-20B, "Certificate of Eligibility for Nonimmigrant (F-1) Student Status" (this form); and
   2. Form I-506, "Application for Change of Nonimmigrant Status", and
   3. Form I-94, "Arrival-Departure Record". If the I-94 is attached to your passport, remove it. DO NOT SEND YOUR PASSPORT.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Form Approved
OMB NO. 43—RO 401

PETITION TO CLASSIFY STATUS OF ALIEN RELATIVE FOR ISSUANCE OF IMMIGRANT VISA

PLEASE NOTE
YOU ARE THE PETITIONER
AND YOUR RELATIVE
IS THE
BENEFICIARY

Fee Stamp

1. Name of beneficiary (Last, in CAPS) (First) (Middle)

2. Do Not Write in This Space

3. Names, birthdates and countries of birth of beneficiary's children:

4. Other names used: (including maiden name if married)

5. Country of beneficiary's birth

6. Date of beneficiary's birth (Month, day, year)

7. My name is: (Last, in CAPS) (First) (Middle)

8. My phone number is:

9. Other names used: (including maiden name if married woman)

10. Relationship of beneficiary to myself

11. I was born (Month) (Day) (Year) in: (Town or city) (State or Province) (Country)

12. If you are a citizen of the United States, give the following:
a. Citizenship was acquired: (Check one)

☐ through birth in the U.S. ☐ through parents ☐ through naturalization ☐ through marriage

(1) If acquired through naturalization, give name under which naturalized, number of naturalization certificate, and date and place of naturalization:

(2) If known, my former alien registration was A

(3) If acquired through parentage or marriage, have you obtained a certificate of citizenship in your own name?

(a) If so, give number of certificate and date and place of issuance

(b) If not, submit evidence of citizenship in accordance with instruction 3 a (2)

13. If you are a lawful permanent resident alien of the United States, give the following:
a. Alien Registration Number
A—
b. Date, place, and means of admission for lawful permanent residence

14. Beneficiary's marital status:
☐ Married ☐ Widowed ☐ Divorced ☐ Single

15. Name of beneficiary's spouse, if married, and date and country of birth (Omit this item if petition is for your spouse)

16. Full address of beneficiary's spouse and children, if any (Omit this item if petition is for your spouse)

17. If this petition is for your spouse or child, give the following:
a. Date and place of your present marriage
b. Names of my prior spouses
c. Names of spouse's prior spouses

18. Has this beneficiary ever been in the U.S.?
☐ YES ☐ NO

19. Are beneficiary and petitioner related by adoption?
☐ YES ☐ NO

SAMPLE FORM I-130

—(CONTINUE WITH ITEM 20 ON REVERSE)—

OATH OR AFFIRMATION OF PETITIONER

I swear (affirm) that I know the contents of this petition signed by me and that the statements herein are true and correct.

Signature of petitioner (See Instruction No. 5) .....

Subscribed and sworn to (affirmed) before me this ..... day of ..... , 19..... , at .....

(SEAL) My commission expires .....

(SIGNATURE OF OFFICER ADMINISTERING OATH) (TITLE)

SIGNATURE OF PERSON PREPARING FORM IF OTHER THAN PETITIONER

I declare that this document was prepared by me at the request of the petitioner and is based on all information of which I have any knowledge.

(SIGNATURE) (ADDRESS) (DATE)

RECEIVED	TRANS. IN	RET'D TRANS. OUT	COMPLETED

FORM I—130
(Rev. 10-26-79) N

TO THE SECRETARY OF STATE:

The petition was filed on _____

The petition is approved for status under section:

☐ 201 (b) SPOUSE, CHILD	☐ 203 (a) (2)
☐ 201 (b) PARENT	☐ 203 (a) (4)
☐ 203 (a) (1)	☐ 203 (a) (5)

DATE OF ACTION

DD

DISTRICT

REMARKS

- ☐ PERSONAL INTERVIEW CONDUCTED
- ☐ DOCUMENT CHECK ONLY
- ☐ FIELD INVESTIGATION COMPLETED
- ☐ APPROVAL PREVIOUSLY FORWARDED

REMARKS (Continued)

(PETITIONER IS NOT TO WRITE ABOVE THIS LINE)

20. Check the appropriate box below and furnish the information required for the box checked

☐ Beneficiary will apply for a visa abroad at the American Consulate in _____ (CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)

☐ Beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at _____ (CITY) (STATE)

If the application for adjustment of status is denied, the beneficiary will apply for a visa abroad at the American Consulate in _____ (CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)

21. My residence in the United States is (C/O, if appropriate) (Apt. No.) (Number and Street) (Town or city) (State) (ZIP Code)

22. My address abroad (if any) is (Number and street) (Town or city) (Province) (Country)

23. Last address at which I and my spouse resided together (Town or city) (State or Province) (Country) (Apt. No.) (Number and street) From (Month) (Year) To (Month) (Year)

24. Address in the United States where beneficiary will reside (City) (State)

25. Address at which beneficiary is presently residing (Apt. No.) (Number and street) (Town or city) (Province or State) (ZIP Code)

26. (a) Beneficiary's address abroad (if any) is (Number and Street) (Town or City) (Province) (Country)

(b) If the beneficiary's native alphabet is other than Roman letters, write his/her name and address in the native alphabet. (Name) (Number and Street) (Town or City) (Province) (Country)

27. If this petition is for a child, (a). is the child married? _____. (b). is the child your adopted child? _____ _____ If so, give the names, dates, and places of birth of all other children adopted by you. If none, so state.

28. If this petition is for a brother or sister, are both your parents the same as the alien's parents? _____ If not, submit a separate statement giving full details as to parentage, dates of marriage of parents, and the number of previous marriages of each parent.

29. If separate petitions are also being submitted for other relatives, give names of each and relationship to petitioner.

30. Have you ever filed a petition for this alien before? _____ If so, give place and date of filing and result.

31. If beneficiary is in the United States, give the following information concerning beneficiary:

(a) Last arrived in U.S. as _____ (Visitor, student, exchange alien, crewman, stowaway, etc.) on (Month) (Day) (Year)	(b) Date beneficiary's stay expired or will expire as shown on his Form I-94 or I-95. (Month) (Day) (Year)	(c) Beneficiary's File number if any A-
(d) Name and address of present employer		(e) Date alien began this employment

SAMPLE FORM I-130

Form Approved
OMB No. 43-RO417

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

APPLICATION BY NONIMMIGRANT STUDENT (F-1) FOR EXTENSION OF STAY, SCHOOL TRANSFER, PERMISSION TO ACCEPT OR CONTINUE EMPLOYMENT, OR PRACTICAL TRAINING

PART I – TO BE FILLED IN BY ALL APPLICANTS

I AM APPLYING FOR (CHECK AND COMPLETE AS APPROPRIATE)

- ☐ EXTENSION OF TEMPORARY STAY UNTIL (SPECIFY DATE) _____
- ☐ PERMISSION TO TRANSFER TO ANOTHER SCHOOL
- ☐ PERMISSION TO ACCEPT OR CONTINUE PRACTICAL TRAINING
- ☐ PERMISSION TO ACCEPT EMPLOYMENT OR TO CONTINUE PREVIOUSLY AUTHORIZED EMPLOYMENT

PRESS FIRMLY – LEGIBLE COPY REQUIRED. PRINT OR TYPE YOUR NAME EXACTLY AS IT APPEARS ON YOUR ARRIVAL-DEPARTURE RECORD FORM I-94. IF YOUR MAILING ADDRESS IN THE U.S. IS WITH SOMEONE WHOSE FAMILY NAME IS DIFFERENT FROM YOURS, INSERT THAT PERSON'S NAME IN THE C/O BLOCK.

1. MY NAME IS	FAMILY NAME (Capital Letters)	FIRST	MIDDLE
IN CARE OF	C/O	FILE NUMBER (If Known)	
2. MAILING ADDRESS IN U.S.	NUMBER AND STREET (Apt. No.)		
	CITY	STATE	ZIP CODE
3. DATE OF BIRTH (Month, Day, Year)	COUNTRY OF BIRTH	COUNTRY OF CITIZENSHIP	
4. DATE AND PORT OF LAST ARRIVAL IN UNITED STATES	DATE ON WHICH AUTHORIZED STAY EXPIRES		

5. DATE OF INTENDED DEPARTURE FROM U.S.

6. SOCIAL SECURITY NUMBER (If Known)

7. PASSPORT ISSUED BY (Country) | PASSPORT EXPIRES ON (Date)

8. TELEPHONE NUMBER (Include Area Code)

9. Has an immigrant visa petition ever been filed in your behalf?
☐ Yes ☐ No If "Yes", where was it filed?

10. Have you ever applied for an immigrant visa or permanent residence in the U.S.?
☐ Yes ☐ No If "Yes", where did you apply?

11. Have you been arrested or convicted of a criminal offense since entering the U.S.?
If "Yes" explain in detail.

☐ EXTENSION GRANTED TO (Date)

☐ EXTENSION DENIED V.D. TO (Date)

EMPLOYMENT ☐ GRANTED ☐ DENIED

PRACTICAL TRAINING
☐ GRANTED ☐ DENIED

TRANSFER ☐ GRANTED ☐ DENIED

THIS SECTION FOR GOVERNMENT USE ONLY

DATE OF ACTION

DD OR DIC OFFICE

IF TRANSFER GRANTED SHOW NEW SCHOOL, CITY, STATE.

12. Number, Street, City, Province (State) and Country of Permanent Residence

13. I ☐ AM ☐ AM NOT married. If married and you wish to apply for extension for your F-2 spouse and children, give the following: (See Instruction #1)

NAMES OF SPOUSE AND CHILDREN	DATE OF BIRTH	COUNTRY OF BIRTH	PASSPORT ISSUED BY (Country) AND EXPIRES ON (Date)	

NOTE: If spouse and children for whom you are seeking extension do not reside with you, give their complete address on a separate attachment to this application.

14. (Insert "Have" or "Have Not") I _____ BEEN EMPLOYED OR ENGAGED IN BUSINESS IN THE UNITED STATES. IF YOU HAVE BEEN EMPLOYED OR ENGAGED IN BUSINESS IN THE UNITED STATES, COMPLETE THE REST OF THE BLOCK.

NAME AND ADDRESS OF EMPLOYER OR BUSINESS

KIND OF EMPLOYMENT OR BUSINESS	INCOME PER WEEK	DATES SUCH EMPLOYMENT OR BUSINESS BEGAN AND ENDED

15. MEANS AND SOURCE OF SUPPORT WHILE IN THE UNITED STATES

16. (COMPLETE THIS ITEM ONLY IF YOU ARE APPLYING FOR A SCHOOL TRANSFER)
I ☐ Have ☐ Have not been a full-time student at the school which I was last authorized by the immigration and Naturalization Service to attend
(If you checked "Have not" state the reasons fully)

I am requesting this transfer because:

ATTACH YOUR FORM I-94 — *DO NOT SEND YOUR PASSPORT	RECEIVED	TRANS. IN	RET'D-TRANS. OUT	COMPLETED

FORM I-538 (Rev. 10-1-80)N

SAMPLE FORM I-538

PART I – (CONTINUED) – TO BE FILLED IN BY ALL APPLICANTS

17. CHECK ITEM (A) OR (B) AND COMPLETE THE ITEM CHECKED *(See Instruction No. 1; also, if you are applying for a transfer see Instruction No. 4.)*

☐ (A) I AM ATTENDING SCHOOL

NAME AND LOCATION OF SCHOOL I AM ATTENDING IS

I ☐ WAS ☐ WAS NOT AUTHORIZED BY THE IMMIGRATION AND NATURALIZATION SERVICE TO ATTEND THAT SCHOOL. IF ANSWER IS "WAS NOT", ATTACH A STATEMENT GIVING NAME AND LOCATION OF THE SCHOOL YOU WERE LAST AUTHORIZED TO ATTEND AND WHY YOU ARE NOT ATTENDING THAT SCHOOL.

NUMBER OF CLASSROOM HOURS I ATTEND SCHOOL WEEKLY	DAY OR EVENING CLASSES (SPECIFY)	MAJOR FIELD OF STUDY	DATE EXPECTED TO COMPLETE

☐ (B) I AM NOT ATTENDING SCHOOL

MY REASON FOR NOT ATTENDING IS:

NAME AND LOCATION OF SCHOOL I WAS LAST AUTHORIZED BY IMMIGRATION AND NATURALIZATION SERVICE TO ATTEND	DATE OF GRADUATION OR LAST ATTENDANCE (SPECIFY)	MAJOR FIELD OF STUDY

PART II – TO BE FILLED IN BY APPLICANT FOR PERMISSION TO ACCEPT OR CONTINUE EMPLOYMENT OR PRACTICAL TRAINING

18. I DESIRE PERMISSION TO ACCEPT EMPLOYMENT FOR THE FOLLOWING REASON: *(CHECK ONE)*

(A) ☐ TO OBTAIN OR CONTINUE PRACTICAL TRAINING IN A FIELD RELATED TO MY COURSE OF STUDY AND RECOMMENDED BY THE SCHOOL.

(B) ☐ TO OBTAIN OR CONTINUE PART-TIME EMPLOYMENT NEEDED BECAUSE OF ECONOMIC NECESSITY WHICH AROSE AS A RESULT OF UNFORESEEN CHANGE IN FINANCIAL CIRCUMSTANCES. *(If you checked this item, explain in block 19).*

19. (FILL IN IF YOU CHECKED (B) IN ITEM 18.)

	My yearly expenses at time of initial F-1 entry were:	My yearly expenses currently are:
Tuition	$	$
Room		
Board		
Other (Specify)		
	— Totals —	

	My yearly income at time of initial F-1 entry was:	My yearly income currently is:
Parents	$	$
Other (specify)		
	— Totals —	

EXPLAIN the unforeseen change in your financial circumstances which arose after your entry into the United States and why parent, relative, organization or other sponsor is unable to furnish you the additional funds needed to cover expenses.

Occupation of Father _____

Annual Income $_____

Occupation of Mother _____

Annual Income $_____

20. DESCRIPTION OF PROPOSED EMPLOYMENT

21. (IF YOU CHECKED (A) IN ITEM 18 ABOVE, CHECK AND FILL IN THE APPLICABLE STATEMENT BELOW.)

☐ I HAVE PREVIOUSLY BEEN GRANTED PERMISSION TO ENGAGE IN EMPLOYMENT FOR PRACTICAL TRAINING FROM _____ TO _____
(date) (date)

☐ I HAVE PREVIOUSLY PARTICIPATED IN AN OFF-CAMPUS WORK-STUDY PROGRAM FROM _____ TO _____
(date) (date)

☐ I HAVE NEVER PREVIOUSLY BEEN GRANTED PERMISSION TO ENGAGE IN EMPLOYMENT FOR PRACTICAL TRAINING.

22. IF YOU HAVE PREVIOUSLY SUBMITTED AN APPLICATION TO ACCEPT OR CONTINUE EMPLOYMENT, FURNISH THE FOLLOWING INFORMATION.

OFFICE OF THE IMMIGRATION & NATURALIZATION SERVICE TO WHICH LAST SUBMITTED: *(CITY AND STATE)*	SUCH APPLICATION WAS ☐ GRANTED ☐ DENIED	DATE GRANTED OR DENIED

SAMPLE FORM I-538

PART III – TO BE FILLED IN BY ALL APPLICANTS

23. Signature of Applicant
I CERTIFY under penalty of law that the information in this form is true and correct.

_____
(Signature)

_____
(Date Signed)

24. Signature of Person Preparing the Form If Other Than Applicant
I DECLARE that this application was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

_____
(Signature)

_____ _____
(Address) (Date Signed)

PLEASE NOTE: Enclose your Temporary Entry Permit (Form I-94, ARRIVAL DEPARTURE RECORD) (See Instruction # 2)

PART IV-(Must be completed by an authorized official of the school student was last authorized by the Immigration and Naturalization Service to attend)

25. I hereby certify as follows:

The applicant: (Check one; if item (D) is checked, complete that item.)

(A) ☐ is taking a full course of studies at this school.

(B) ☐ is taking less than a full course of studies at this school.

(C) ☐ completed or will complete the course of study at this school on _____

(D) ☐ did not complete the course of studies but terminated attendance on _____ While attending, ☐ was ☐ was not taking a full course or studies.

If application is for permission to accept or continue employment: (Check one)

(A) ☐ the proposed employment is recommended for practical training of the student in the field of study. To the best of my belief such training will not be available in the country of his/her foreign residence.

(B) ☐ the proposed employment is recommended because of economic necessity due to an unforeseen change in the student's financial circumstances. The employment will not interfere with the student's ability to carry successfully a full course of study.

This school (or if approval was not in its own name, the _____ school district under which it operates or the _____ school of which it is a part) was approved for attendance by non-immigrant students by the Immigration and Naturalization Service, and such approval has not been withdrawn.

DATE	NAME OF SCHOOL	SIGNATURE OF SCHOOL OFFIC	TITLE

Form Approved
OMB No. 43-R0342

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Fee Stamp

APPLICATION FOR CHANGE OF NONIMMIGRANT STATUS

(Under Section 248 of the Immigration and Nationality Act)

➡ Please read the instructions on the first page

I hereby apply to have my status in the United States changed to that of a nonimmigrant _____ (Student, visitor, etc.)

I wish to remain in the United States in that new status until _____ (Month, Day, Year)

This application is submitted together with the required documents which are made a part hereof and, if applicable, the fee of $10.

PRESS FIRMLY—LEGIBLE COPY REQUIRED. PRINT OR TYPE YOUR NAME EXACTLY AS IT APPEARS ON YOUR ARRIVAL-DEPARTURE RECORD FORM I-94. IF YOUR MAILING ADDRESS IN THE U. S. IS WITH SOMEONE WHOSE FAMILY NAME IS DIFFERENT FROM YOURS, INSERT THAT PERSON'S NAME IN THE C/O BLOCK.

1. YOUR NAME	FAMILY NAME *(Capital Letters)*	GIVEN	MIDDLE
IN CARE OF	C/O		FILE NUMBER *(If Known)*
2. MAILING ADDRESS IN U.S.	NUMBER AND STREET *(Apt. No.)*		
	CITY	STATE	ZIP CODE
3. DATE OF BIRTH *(Month, Day, Year)*	COUNTRY OF BIRTH		COUNTRY OF CITIZENSHIP
4. PRESENT NONIMMIGRANT CLASSIFICATION		DATE ON WHICH AUTHORIZED STAY EXPIRES	
5. DATE AND PORT OF LAST ARRIVAL IN UNITED STATES		NAME OF VESSEL, AIRLINE, OR OTHER MEANS OF LAST ARRIVAL IN U. S.	

6. I AM IN POSSESSION OF PASSPORT
NUMBER:*
ISSUED BY (Country)
WHICH EXPIRES ON: (Month, Day, Year)

7. MY I-94 IS ATTACHED ☐ YES ☐ NO
If "No", it was ☐ Lost ☐ Stolen ☐ Destroyed
☐ Other (Specify) _____

8. I ENTERED WITH NONIMMIGRANT VISA NO.

9. MY NONIMMIGRANT STATUS IN THE UNITED STATES ☐ HAS ☐ HAS NOT BEEN CHANGED SINCE MY ENTRY (If changed, give details)

Reclassification to — FOR GOVERNMENT USE ONLY

☐ STAY GRANTED TO (Date) — DATE OF ACTION

☐ Application DENIED. V.D. TO (Date) — DD OR OIC OFFICE

10. MY PERMANENT ADDRESS OUTSIDE THE UNITED STATES IS: (Street) (City or Town) (County, District, Province or State) (Country)

11. I RESIDED AT THE ADDRESS IN ITEM 10 FROM: (Month, Day, Year) TO: (Month, Day, Year)

12. SINCE MY ENTRY INTO THE UNITED STATES, I HAVE RESIDED AT THE FOLLOWING PLACES:

(Street and No.) (City or Town) (State)	FROM: (Month, Day, Year)	TO: (Month, Day, Year)
		Present Time

13. I DESIRE TO HAVE MY NONIMMIGRANT STATUS CHANGED FOR THE FOLLOWING REASONS:

14. I DID NOT APPLY TO THE AMERICAN CONSUL FOR A VISA IN THE NONIMMIGRANT STATUS WHICH I AM NOW SEEKING FOR THE FOLLOWING REASONS:

15. I SUBMIT THE FOLLOWING DOCUMENTARY EVIDENCE TO ESTABLISH THAT I WILL MAINTAIN THE NONIMMIGRANT CLASSIFICATION TO WHICH I WISH TO BE CHANGED:

ATTACH YOUR FORM I-94 · *DO NOT SEND YOUR PASSPORT

RECEIVED	TRANS. IN	RET'D. TRANS. OUT	COMPLETED

FORM I-506 (REV. 10-22-79)

SAMPLE FORM I-506

16. (COMPLETE THIS BLOCK ONLY IF YOU ARE APPLYING FOR CHANGE TO STUDENT STATUS.)
THE COUNTRY IN WHICH I INTEND TO LIVE AND WORK AFTER I COMPLETE MY SCHOOLING IN THE UNITED STATES IS_____

(IF YOU ARE SEEKING TO ATTEND A VOCATIONAL OR BUSINESS SCHOOL, COMPLETE THE FOLLOWING ADDITIONAL STATEMENTS BY CHECKING THE APPROPRIATE BOXES.)

THE SCHOOLING I AM SEEKING ☐ IS ☐ IS NOT AVAILABLE IN MY COUNTRY.

I ☐ INTEND ☐ DO NOT INTEND TO ENGAGE IN THE OCCUPATION FOR WHICH THAT SCHOOLING WILL PREPARE ME.

17. MY OCCUPATION IS:	18. SOCIAL SECURITY NO. (If none, state "none")

19. I ☐ HAVE ☐ HAVE NOT BEEN EMPLOYED OR ENGAGED IN BUSINESS SINCE ENTERING THE UNITED STATES. IF ANSWER IS IN AFFIRMATIVE, COMPLETE THE FOLLOWING:

NATURE OF OCCUPATION OR BUSINESS IN WHICH I ☐ AM ☐ WAS EMPLOYED:

NAME OF EMPLOYER OR BUSINESS FIRM	ADDRESS
MY EMPLOYMENT OR ENGAGEMENT IN BUSINESS BEGAN ON: (Month, Day, Year)	AND ENDED ON: (Month, Day, Year)

MY MONTHLY INCOME FROM EMPLOYMENT OR BUSINESS ☐ IS ☐ WAS: $

20. IF NOT EMPLOYED OR ENGAGED IN BUSINESS IN THE UNITED STATES, DESCRIBE FULLY THE SOURCE AND AMOUNT OF YOUR INCOME ABROAD AND HOW SUPPORTED WHILE IN THE UNITED STATES: (If applying for change to student status, see Instruction # 4.)

21. I ☐ AM ☐ AM NOT MARRIED

Name of Spouse	Present address of Spouse	Citizenship (Country) of Spouse

22. I HAVE_____(Number) CHILDREN: (List children below)

Name	Age	Place of Birth	Present Address

23. I HAVE_____(Number) RELATIVES IN THE UNITED STATES OTHER THAN MY SPOUSE AND/OR CHILDREN: (List relatives below)

Name	Relationship	Immigration Status	Present Address

SAMPLE FORM I-506

24. I ☐ HAVE ☐ HAVE NOT SUBMITTED THE ADDRESS REPORTS REQUIRED BY THE ALIEN REGISTRATION ACT OF 1940, AS AMENDED, AND BY SECTION 265 OF THE IMMIGRATION AND NATIONALITY ACT.

25. I ☐ HAVE ☐ HAVE NOT BEEN ARRESTED OR CONVICTED OF ANY CRIMINAL OFFENSE IN THE UNITED STATES OR IN ANY FOREIGN COUNTRY. IF ANSWER IS IN THE AFFIRMATIVE, GIVE DETAILS:

26. I certify that the above is true and correct to the best of my knowledge and belief. (If form prepared by other than applicant, that person must execute item 27.)

(Signature of Applicant) (Date)

SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN APPLICANT

27. I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

(Signature) (Address) (Date)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Form approved
OMB No. 43–R423

AFFIDAVIT OF SUPPORT

(ANSWER ALL ITEMS; FILL IN WITH TYPEWRITER OR PRINT IN BLOCK LETTERS IN INK.)

I, _____, residing at _____
(Name) (Street and Number)

_____
(City) (State) (ZIP Code if in U.S.) (Country)

BEING DULY SWORN DEPOSE AND SAY:

1. I was born on _____ at _____
(Date) (City) (Country)

If you are not a native born United States citizen, answer the following as appropriate:

a. If a United States citizen through naturalization, give certificate of naturalization number _____

b. If a United States citizen through parent(s) or marriage, give citizenship certificate number _____

c. If United States citizenship was derived by some other method, attach a statement of explanation.

d. If a lawfully admitted permanent resident of the United States, give 'A' number _____

2. That I am _____ years of age and have resided in the United States since (date) _____

3. That this affidavit is executed in behalf of the following person:

_____
(Name)

_____ (Sex) (Age)
(Citizen of — Country) (Marital Status) (Relationship to Deponent)

_____
(Presently resides at — Street and Number) (City) (State) (Country)

4. That this affidavit is made by me for the purpose of assuring the United States Government that the person named in item 3 will not become a public charge in the United States.

5. That I am willing and able to receive, maintain and support the person named in item 3. That I am ready and willing to deposit a bond, if necessary, to guarantee that such person will not become a public charge during his or her stay in the United States, or to guarantee that the above named will maintain his or her nonimmigrant status if admitted temporarily and will depart prior to the expiration of his or her authorized stay in the United States.

6. That I understand this affidavit will be binding upon me for a period of three (3) years after entry of the person named in item 3 and that the information and documentation provided by me may be made available to the Secretary of Health and Human Services.

7. That I am employed as, or engaged in the business of _____ with _____
(Type of business) (Name of concern)

at _____
(Street and Number) (City) (State) (ZIP Code)

I derive an annual income of (if self-employed, I have attached a copy of my last income tax return or report of commercial rating concern which I certify to be true and correct to the best of my knowledge and belief. See instruction for nature of evidence of net worth to be submitted.) $_____

I have on deposit in savings banks in the United States $_____

I have other personal property, the reasonable value of which is $_____

I have stocks and bonds with the following market value, as indicated on the attached list which I certify to be true and correct to the best of my knowledge and belief. $_____

I have life insurance in the sum of $_____
With a cash surrender value of $_____

I own real estate valued at $_____
With mortgages or other encumbrances thereon amounting to $_____
Which is located at _____
(Street and number) (City) (State) (ZIP Code)

SAMPLE FORM I-134

8. That the following persons are dependent upon me for support: (Place a check ✓ in the appropriate column to indicate whether the person named is wholly or partially dependent upon you for support.)

NAME OF PERSON	WHOLLY DEPENDENT	PARTIALLY DEPENDENT	AGE	RELATIONSHIP TO ME

9. That I have previously submitted affidavit(s) of support for the following person(s). If none, state none.

Name	*Date submitted*

10. That I have submitted visa petition(s) to the Immigration and Naturalization Service on behalf of the following person(s). If none, state none.

Name	*Relationship*	*Date submitted*

11. (Complete this block only if the person named in item 3 will be in the United States temporarily.)
That I ☐ do intend ☐ do not intend, to make specific contributions to the support of the person named in item 3. (If you check "do intend", indicate the exact nature and duration of the contributions. For example, if you intend to furnish room and board, state for how long and, if money, state the amount in United States dollars and state whether it is to be given in a lump sum, weekly, or monthly, and for how long.)

SAMPLE FORM I-134

OATH OR AFFIRMATION OF DEPONENT

I swear (affirm) that I know the contents of this affidavit signed by me and the statements are true and correct.

Signature of deponent _____

Subscribed and sworn to (affirmed) before me this _____ *day of* _____, *19* _____

at _____. *My commission expires on* _____.

Signature of Officer Administering Oath _____ *Title* _____

If affidavit prepared by other than deponent, please complete the following:
I declare that this document was prepared by me at the request of the deponent and is based on all information of which I have any knowledge.

_____
(Signature) *(Address)* *(Date)*

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

READ INSTRUCTIONS CAREFULLY
FEE WILL NOT BE REFUNDED

Form Approved
OMB 15-R0068

APPLICATION TO EXTEND TIME OF TEMPORARY STAY

I HEREBY APPLY TO EXTEND MY TEMPORARY STAY IN THE UNITED STATES

FEE STAMP

PRESS FIRMLY—LEGIBLE COPY REQUIRED. PRINT OR TYPE YOUR NAME EXACTLY AS IT APPEARS ON YOUR ARRIVAL—DEPARTURE RECORD FORM I-94. IF YOUR MAILING ADDRESS IN THE U.S. IS WITH SOMEONE WHOSE FAMILY NAME IS DIFFERENT FROM YOURS, INSERT THAT PERSON'S NAME IN THE C/O BLOCK.

1. YOUR NAME — FAMILY NAME (CAPITAL LETTERS) — FIRST — MIDDLE
   IN CARE OF — C/O
2. MAILING ADDRESS IN U.S. — NUMBER AND STREET (APT. NO.) — FILE NUMBER
   CITY — STATE — ZIP CODE
3. DATE OF BIRTH (MO./DAY/YR.) — COUNTRY OF BIRTH — COUNTRY OF CITIZENSHIP
4. PRESENT NONIMMIGRANT CLASSIFICATION — DATE ON WHICH AUTHORIZED STAY EXPIRES
5. DATE AND PORT OF LAST ARRIVAL IN U.S. — NAME OF VESSEL, AIRLINE, OR OTHER MEANS OF LAST ARRIVAL IN U.S.
6. DATE TO WHICH EXTENSION IS REQUESTED
7. REASON FOR REQUESTING EXTENSION
8. REASON FOR COMING TO THE U.S.

FOR GOVERNMENT USE ONLY

☐ EXTENSION GRANTED TO (DATE)
☐ EXTENSION DENIED V.D. TO (DATE)
DATE OF ACTION
DD OR DHC OFFICE

9. HAS AN IMMIGRANT VISA PETITION EVER BEEN FILED IN YOUR BEHALF? ☐ YES ☐ NO IF "YES", WHERE WAS IT FILED?
10. HAVE YOU EVER APPLIED FOR AN IMMIGRANT VISA OR PERMANENT RESIDENCE IN THE U.S.? ☐ YES ☐ NO IF YES, WHERE DID YOU APPLY?
11. I INTEND TO DEPART FROM THE U.S. ON (DATE) — I AM IN POSSESSION OF A TRANSPORTATION TICKET FOR MY DEPARTURE ☐ YES ☐ NO
12. PASSPORT NO. — EXPIRES ON (DA.) — ISSUED BY (COUNTRY)
13. NUMBER, STREET, CITY, PROVINCE (STATE) AND COUNTRY OF PERMANENT RESIDENCE
14. MY USUAL OCCUPATION IS
15. SOCIAL SECURITY NO. (IF NONE, STATE "NONE")
16. I ☐ AM ☐ AM NOT MARRIED. IF YOU WISH TO APPLY FOR EXTENSION FOR YOUR SPOUSE & CHILDREN, GIVE THE FOLLOWING: (SEE INSTRUCTIONS #1)

NAME OF SPOUSE AND CHILDREN	DATE OF BIRTH	COUNTRY OF BIRTH	PASSPORT ISSUED BY (COUNTRY) AND EXPIRES ON (DATE)	

NOTE IF SPOUSE AND CHILDREN FOR WHOM YOU ARE SEEKING EXTENSION DO NOT RESIDE WITH YOU, GIVE THEIR COMPLETE ADDRESS ON A SEPARATE ATTACHMENT TO THIS APPLICATION

17. I (INSERT "HAVE" OR "HAVE NOT") _____ BEEN EMPLOYED OR ENGAGED IN BUSINESS IN THE UNITED STATES. (IF YOU HAVE BEEN EMPLOYED OR ENGAGED IN BUSINESS IN THE UNITED STATES, COMPLETE THE REST OF THE BLOCK.)

NAME AND ADDRESS OF EMPLOYER OR BUSINESS	INCOME PER WEEK	DATES EMPLOYMENT OR BUSINESS BEGAN & ENDED

I certify that the above is true and correct

SIGNATURE OF APPLICANT — DATE

SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN APPLICANT

I declare that this document was prepared by me at the request of the applicant and is based on all information on which I have any knowledge.

SIGNATURE — ADDRESS — DATE

ATTACH YOUR FORM I-94 OR I-144 - DO NOT SEND YOUR PASSPORT

RECEIVED	TRANS. IN	RET'D. TRANS. OUT	COMPLETED

Form I-539 (Rev. 10-15-80)N

SAMPLE FORM I-539

PLEASE DO NOT STAPLE THIS FORM

OMB-109-R0017

INTERNATIONAL COMMUNICATION AGENCY
ASSOCIATE DIRECTORATE FOR EDUCATIONAL AND CULTURAL AFFAIRS
CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR (J-1) STATUS

A000006

PART 1 — IT IS HEREBY CERTIFIED THAT:

1. _____ ( ) Male / ( ) Female
(FAMILY NAME OF EXCHANGE VISITOR) (FIRST NAME) (MIDDLE NAME)

born ___ ___ ___ in _____, _____
(Mo.) (Day) (Yr.) (City) (Country)

a legal permanent resident of _____ ___, whose position in
(Country) (Code)

that country is _____ ___
(Pos Code)

U.S. address

THE PURPOSE OF THIS FORM IS TO:

1 ( ) Begin a new program
2 ( ) Extend an on going program
3 ( ) Transfer to a different program
4 ( ) Replace a lost form
5 ( ) Permit visitor's immediate family to enter U.S. separately

2. will be sponsored by _____

_____ to participate in Exchange Visitor Program No ___-___-___, which is still valid and is officially described as follows:

3. This form covers the period from ___ ___ ___ to ___ ___ ___ (one year maximum)
(Mo.) (Day) (Yr.) (Mo.) (Day) (Yr.)
If this form is for family travel or replaces a lost form, the expiration date on the exchange visitor's I-94 is _____

4. The category of this visitor is 1 ( ) Student, 2 ( ) Trainee, 3 ( ) Teacher, 4 ( ) Professor, 5 ( ) Research Scholar or Specialist, 6 ( ) International Visitor, 7 ( ) Professional Trainee, and the specific educational field or non-study activity to be engaged in is Code No. _____, verbally described as follows:
(Subj/Field Code)

5. During the period covered by this form, it is estimated that the following financial support (in U.S. $) will be provided to this exchange visitor by:

a. ( ) The Program Sponsor in item 2 above $ _____

Financial support from organizations other than the sponsor will be provided by one or more of the following:

b1. ( ) U.S. Government Agency(ies): _____ (Agency Code), $ _____ ; b2 _____ (Agency Code), $ _____

c1. ( ) International Organization(s): _____ (Int. Org. Code), $ _____ ; c2 _____ (Int. Org. Code), $ _____

d. ( ) The Exchange Visitor's Government $ _____

e. ( ) The binational Commission of the visitor's C... $ _____

f. ( ) All other organizations providing suppo... $ _____

g. ( ) Personal funds $ _____

(If necessary, use above spaces for funding by multiple U.S. Agencies or Intl. Organizations)

SAMPLE FORM IAP-66

6. INS USE

7. _____
(Name of Official Preparing Form) (Title)

_____
(Address)

_____
(Signature of Responsible Officer or Alternate R.O.) (Date)

PART II—ENDORSEMENT OF CONSULAR OR IMMIGRATION OFFICER REGARDING SECTION 212(e) OF THE I.N.A.

I, (Name) _____

(Title) _____

have determined that this alien in the above program

1 ( ) is not subject to the two year residence requirement,

2 ( ) is subject, based on: A ( ) government financing and/or
B ( ) the Exchange visitor skills list and/or
C ( ) PL 94 484 as amended

_____
(Signature of Officer) (Date)

PART III—STATEMENT OF RESPONSIBLE OFFICER FOR RELEASING SPONSOR (FOR TRANSFER OF PROGRAM)

Date _____. Transfer of this exchange visitor from program No. _____ sponsored by _____

to the program specified in item (2) is necessary or highly desirable and is in conformity with the objectives of the Mutual Educational and Cultural Exchange Act of 1961.

_____
(Signature of Officer) (Date)

IAP-66 (10-80)

Copy 1 - For Immigration and Naturalization Service

Page 1

INSTRUCTIONS FOR AND CERTIFICATION BY the alien beneficiary named on page 1 of this Form:

Read and complete this page prior to presentation to a United States consular or immigration official.

1. I understand that the following conditions are applicable to exchange visitors:
   (a) *Extension of Stay and Program Transfers:* The initial period of stay in the United States authorized for an exchange visitor may not exceed one year, notwithstanding the fact that a sponsorship beyond that period may be contemplated. The completed Form IAP-66, which is required in order to apply for an extension or transfer, may be obtained from or with the assistance of the sponsor. It must be submitted to the appropriate office of the Immigration and Naturalization Service within fifteen to sixty days before the expiration of the authorized period of stay.
   (b) *Limitation on Stay:* STUDENTS - as long as they pursue a substantial scholastic program leading to recognized degrees or certificate. (However, students whom the sponsor recommends for practical training may be permitted to remain for such purpose for an additional period of up to 18 months after receiving their degree or certificate.) BUSINESS AND INDUSTRIAL TRAINEES - 18 months. TEACHERS, PROFESSORS, RESEARCH SCHOLARS, and SPECIALISTS - 3 years. INTERNATIONAL VISITORS - 1 year. PROFESSIONAL TRAINEES: Graduate Nurses - 2 years; Medical Interns and Residents - 2 years with possibility of extension as provided by PL 94 484 as amended; Medical Technologists, Medical Record Librarians, Medical Record Technicians, Radiologic Technicians, and Other Participants in Similar Categories - the length of the approved training program plus a maximum of 18 months for practical experience, not exceeding a total of 3 years.
   (c) *Documentation Required for Admission or Readmission as an Exchange Visitor:* To be eligible for admission or readmission to the United States, an exchange visitor must present the following at the port of entry: (1) A valid nonimmigrant visa bearing classification J-1, unless exempt from nonimmigrant visa requirements; (2) A passport valid for six months beyond the anticipated period of admission, unless exempt from passport requirements; (3) A properly executed Form IAP-66. Copies one and two of Form IAP-66 must be surrendered to a United States immigration officer upon arrival in the United States. Copy three may be retained for re-entries within a period of previously authorized stay.
   (d) *Change of Status:* Exchange visitors are expected to leave the United States upon completing their objective. An exchange visitor who is subject to the two-year home-country physical presence requirement is not eligible to change his/her status while in the United States to any other nonimmigrant category except, if applicable, that of official or employee of a foreign government (A) or of an international organization (G) or member of the family or attendant of either of these types of officials or employees.
   (e) *Two-Year Home Country Physical Presence Requirement:* Any exchange visitor whose program is financed in whole or in part, directly or indirectly by either his/her own government or by the United States Government is required to reside in his/her own country for two years following completion of his/her program in the United States before he/she can become eligible for permanent residence (immigration) or for status as a temporary worker ("H") or as an intracompany transferee ("L"). Likewise, if an exchange visitor is acquiring a skill which is in short supply in his/her own country (these skills appear on the *Exchange Visitor Skills List*) he/she will be subject to this same two-year home-country residence requirement as well as alien physicians entering the U.S. to receive graduate medical education or training (Section 212(e) of the Immigration and Nationality Act and PL 94 484, as amended).

2. **I seek to enter into, or remain temporarily in, the United States as an exchange visitor under Section 101(a)(15)(J) of the Immigration and Nationality Act, as amended, for a total maximum stay of _____ *(months or years)* for the purpose of (state type of degree, certificate, or other objective toward which your program participation will be directed. Doctors of medicine should indicate their medical specialty): _____**
   _____, and I understand that I shall be permitted to perform only those activities described in Item 2 and 4 on page 1 of this Form.

3. **My passport numbered _____ issued by _____ *(Country)* expires on _____ *(Mo./Day/Yr.)***

4. **I ☐ have ☐ have not *(check one)* been in the United States previously as an exchange visitor. (If you have been in the United States previously as an exchange visitor, show total length of time: _____, and dates: _____):**

5. **(To be completed only if application is being made for extension of stay or Program transfer. Use a continuation sheet if necessary.) I first entered the United States as an exchange visitor, or acquired exchange visitor status, on _____ *(Mo./Day/Yr.)* and have engaged in the following activities under the sponsorship of respective institutions listed for each activity *(include program numbers)*:**
   _____
   _____

6. **I understand that a Consular or Immigration Officer will determine whether I am subject to the two year home country physical presence requirement described in item 1(e) above. If such officer determines that I am subject, I will accept that determination and comply with the requirement. I understand that the determination will be endorsed in Part II, Page 1 of this form.**

7. **I certify that I have read and I understand the foregoing.**

_____ _____ _____

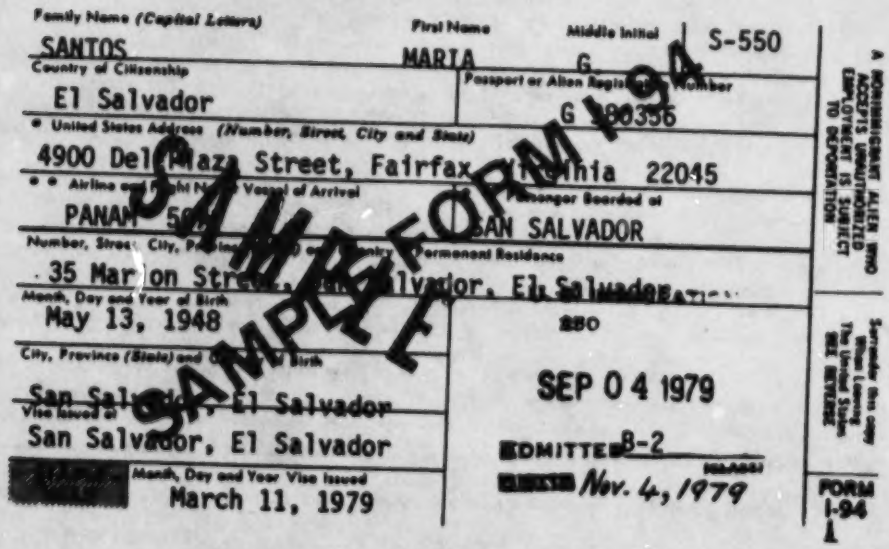
(Signature of Applicant) *(Place)* *(Date: Mo., Day, Yr.)*

IAP-66

Page 2

SAMPLE FORM IAP-66

FORM I-94 (ARRIVAL-DEPARTURE RECORD)



Front—Actual Size

IMPORTANT NOTICE

- Retain this permit in your possession.
- The validity date of your visa does not mean you have permission to remain in the U.S. for such time.
- You are authorized to stay in the U.S. only until the date inscribed by the inspector on this form. To remain past this date, without permission from Immigration authorities, is a violation of law.

WHEN YOU LEAVE THE UNITED STATES

- By sea or air, surrender this permit to transportation line.
- Over Canadian border, surrender this permit to Canadian Immigration Officer.
- Over Mexican border, surrender this permit to United States Immigration Officer.

RECORD OF EXTENSIONS

To _____ Office _____

_____ Office _____

_____ Office _____

DEPARTURE RECORD

Port:

Date:

Carrier:

To:
(Country of disembarkation)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ARRIVAL-DEPARTURE RECORD FORM I-94 (REV. 6-1-76)Y
FORM APPROVED OMB NO. 43-R0466

Reverse

SAMPLE FORM I-94

UNITED STATES
DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

PETITION TO CLASSIFY NONIMMIGRANT AS TEMPORARY WORKER OR TRAINEE

Date Filed

Form approved
OMB No. 43-R0348

Fee Stamp

File No.

(To be submitted in duplicate, with supplementary documents described in instructions, to the District Director having administrative jurisdiction over the place in the United States in which it is intended the alien(s) be employed or trained)

(THIS BLOCK NOT TO BE FILLED OUT BY PETITIONER)

The Secretary of State is hereby notified that the alien(s) for whom this petition was filed is (are) entitled to the nonimmigrant status checked below:

☐ H-1 ☐ H-3
☐ H-2 ☐ L-1

REMARKS:

The validity of this petition will expire on _____.
The admission of the alien(s) may be authorized to the above date.

DATE OF ACTION
DD

DISTRICT

(PETITIONER NOT TO WRITE ABOVE THIS LINE)
(PLEASE FILL IN WITH TYPEWRITER OR PRINT IN BLOCK LETTERS IN INK)

I hereby petition, pursuant to the provisions of section 214(c) of the Immigration and Nationality Act, for the following: (Check one.)

H-1 ☐ Alien(s) of distinguished merit and ability to perform services of an exceptional nature requiring such merit and ability.

H-2 ☐ Alien(s) to perform temporary service or labor for which a bona fide need exists. (One who is to perform duties which are themselves temporary in nature.)

H-3 ☐ Alien trainee(s). (One who seeks to enter at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving training in any field of endeavor. Incidental productive work necessary to the training is permitted provided a United States worker is not thereby displaced.)

L-1 ☐ Intra-company transferee. (One who has been employed continuously for one year and who seeks to enter in order to continue to render services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity or in a capacity which involves specialized knowledge.)

SAMPLE FORM I-129B

1. NAME OF PETITIONER

2. DATE BUSINESS ESTABLISHED

3. ADDRESS (NUMBER, STREET, CITY, STATE, ZIP CODE)

4. DESCRIPTION OF PETITIONER'S BUSINESS, INCLUDING ITS NATURE, NUMBER OF EMPLOYEES, AND GROSS ANNUAL INCOME

5. LOCATION OF AMERICAN CONSULATE AT WHICH ALIEN(S) WILL APPLY FOR VISA(S): (City in Foreign Country) (Foreign Country)

(If petition is to be made for more than one H alien and application for visas will be made at more than one American Consulate, a separate petition must be submitted for each consulate at which H visa applications will be made. Separate petition must be filed for each L-1 alien.)

6. THE ALIEN(S) WILL PERFORM SERVICES OR LABOR FOR OR RECEIVE TRAINING FROM THE FOLLOWING ESTABLISHMENT IN THE U.S.:
(Name of Establishment)

(Street and Number) (City or Town) (State) (Zip Code)

7. PERIOD REQUIRED TO COMPLETE SERVICES OR TRAINING			8. WAGES PER WEEK	8A. HOURS PER WEEK	9. OVERTIME RATE
From (date)	To (date)	No. of days or months			

10. OTHER COMPENSATION (Explain)	10A. VALUED AT $ WEEKLY	11. BY WHOM PAID?

Form I-129B
(Rev. 6-30-80)N

RECEIVED	TRANS. IN	RET'D-TRANS. OUT	COMPLETED

ALL PETITIONERS COMPLETE ITEMS 12A THROUGH 22. If petition is for more than one H alien, give required information for each additional alien in space provided on page 3. If the identity of the H aliens is not known at present, you must furnish information concerning them as soon as that information becomes known to you.

12A. ALIEN'S NAME (Family name in capital letters) (First name) (Middle name)

12B. OTHER NAMES (Show all other past and present names, including maiden name if married woman.)

12C. NUMBER OF ALIENS INCLUDED IN THIS PETITION

13. ADDRESS TO WHICH ALIEN WILL RETURN (Street and Number) (City) (Province) (Country)

14. PRESENT ADDRESS

15. PROPOSED PORT OF ENTRY

16. DATE OF BIRTH	17. PLACE OF BIRTH	18. PRESENT NATIONALITY OR CITIZENSHIP	19. PRESENT OCCUPATION

20. HAS AN IMMIGRANT VISA PETITION EVER BEEN FILED ON THE ALIEN'S BEHALF? ☐ YES ☐ NO
If "Yes", where was it filed?

21. HAS THE ALIEN EVER APPLIED FOR AN IMMIGRANT VISA OR PERMANENT RESIDENCE IN THE U.S.? ☐ YES ☐ NO
If "Yes", where did he apply?

22. TO YOUR KNOWLEDGE, HAS ANY VISA PETITION FILED BY YOU OR ANY OTHER PERSON OR ORGANIZATION FOR THE NAMED ALIEN(S) BEEN DENIED? ☐ YES ☐ NO
If you answered "yes", complete the following: Date of filing of each denied petition
Place of filing of each denied petition (city)
TO YOUR KNOWLEDGE, HAVE ANY OF THE NAMED ALIEN(S) EVER BEEN IN THE U.S.? ☐ YES ☐ NO (If "yes" identify each on Page 3)

23. NONTECHNICAL DESCRIPTION OF SERVICES TO BE PERFORMED BY OR TRAINING TO BE RECEIVED BY ALIEN(S) (THIS BLOCK NEED NOT BE COMPLETED IF PETITION IS FOR H-2 WORKERS)

24. (If you are petitioning for an H-1 physician or nurse, complete this block.)
DOES THE LAW GOVERNING THE PLACE WHERE THE ALIEN'S SERVICES WILL BE PERFORMED RESTRICT HIM/HER FROM PERFORMING ANY OF THE DESIRED SERVICES? ☐ YES ☐ NO If the answer is "yes", attach statement describing the restricted services and setting forth the reason for the restriction. (See instructions for Physicians and Nurses.)

25. (If you are petitioning for a trainee, complete this block.)
A. IS SIMILAR TRAINING AVAILABLE IN ALIEN'S COUNTRY? ☐ YES ☐ NO
B. WOULD ALIEN'S TRAINING RESULT IN DISPLACEMENT OF A UNITED STATES WORKER? ☐ YES ☐ NO

26. (If you are petitioning for an L-1 alien, complete this block. Check appropriate boxes.)
a. **The alien has been employed in an** ☐ executive or ☐ managerial capacity; ☐ in a capacity which involves specialized knowledge
by _____ (name and address of employer) since _____ (date)
b. **The petitioner is** ☐ the same employer ☐ subsidiary ☐ an affiliate of the employer abroad.

FILL IN ITEMS 27 THROUGH 31 INCLUSIVE ONLY IF PETITION IS FOR H-2 ALIEN(S)

27. DESCRIPTIVE JOB TITLE OF WORK TO BE PERFORMED BY ALIEN(S) (Use title which corresponds to that used in job order placed with state Employment Service or Agency by petitioner for same type of labor. Where work in more than one job classification is to be performed by aliens, state number to be employed in each job classification.)

28. IS (ARE) ALIEN(S) SKILLED IN WORK TO BE PERFORMED? ☐ YES ☐ NO ☐ UNKNOWN

29. IS ANY LABOR ORGANIZATION ACTIVE IN THE LABOR FIELD(S) SPECIFIED IN ITEM 27? ☐ YES ☐ NO
(If "yes", specify organization(s) and labor field(s).)

30. IS THE PETITIONER INVOLVED IN, OR ARE THERE THREATENED, ANY LABOR RELATIONS DIFFICULTIES, INCLUDING STRIKES OR LOCK-OUTS? (Specify)

31. I HAVE NOT BEEN ABLE TO FIND IN THE UNITED STATES ANY UNEMPLOYED PERSON(S) CAPABLE OF PERFORMING THE DUTIES OF THE POSITION(S) TO BE FILLED. THE FOLLOWING EFFORTS HAVE BEEN MADE TO FIND SUCH PERSON(S): (Complete only if labor certification not attached.)

ALL PETITIONERS FILL IN ITEMS 32 THROUGH 34B.

32. LIST DOCUMENTS SUBMITTED IN SUPPORT OF THIS PETITION.

SAMPLE FORM I-129B

33. THE DOCUMENTS SUBMITTED HEREWITH ARE HEREBY MADE A PART OF THIS PETITION.

I am willing (unwilling) to post any bond required as a condition to the approval of this petition.
I agree that as soon as known I shall furnish the District Director to whom this petition is being submitted with the names of those alien(s) not named herein.
If the petition is for temporary worker(s), I certify that I have a bona fide need of such worker(s).
If the petition is for trainee(s), I certify he/she is coming to the United States to participate in a bona fide training program.
I certify that the statements and representations made in this petition are true and correct to the best of my knowledge and belief.

34A. SIGNATURE OF PETITIONER	DATE	34B. TITLE (Must be petitioner or authorized agent of petitioner)

SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN PETITIONER

35. I declare that this document was prepared by me at the request of the petitioner and is based on all information of which I have any knowledge.

(Signature) _____ (Address) _____ (Date) _____

If this petition is for more than one alien of distinguished merit and ability (H-1) or trainee (H-3), use spaces below to give required information. If additional space is needed, attach separate sheet executed in same general manner.

NAME	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	OCCUPATION

PRESENT ADDRESS

ADDRESS TO WHICH ALIEN WILL RETURN

NONTECHNICAL DESCRIPTION OF SERVICES TO BE PERFORMED BY OR TRAINING TO BE RECEIVED BY ALIEN

NAME	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	OCCUPATION

PRESENT ADDRESS

ADDRESS TO WHICH ALIEN WILL RETURN

NONTECHNICAL DESCRIPTION OF SERVICES TO BE PERFORMED BY OR TRAINING TO BE RECEIVED BY ALIEN

NAME	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	OCCUPATION

PRESENT ADDRESS

ADDRESS TO WHICH ALIEN WILL RETURN

NONTECHNICAL DESCRIPTION OF SERVICES TO BE PERFORMED BY OR TRAINING TO BE RECEIVED BY ALIEN

SAMPLE FORM I-129B

If this petition is for more than one (H-2) alien to perform temporary service or labor, use spaces below to give required information. If additional space is needed, attach separate sheet executed in same general manner. Identify each alien who has been in the U.S., by placing an "X" in the last column.

NAME	NATIONALITY	DATE AND PLACE OF BIRTH	PRESENT ADDRESS	X

INSTRUCTIONS

READ INSTRUCTIONS CAREFULLY. FEE WILL NOT BE REFUNDED.

Failure to comply with instructions may make it necessary to reject your petition.

General

This petition must be executed in duplicate. (The alien spouse and minor children of the beneficiary of an approved petition are automatically entitled to the same nonimmigrant classification he/she has been accorded if accompanying him/her or following to join him/her. No petitions for them are required.)

All supporting documents must be submitted in original and one copy. If the return of the original is desired, submit two copies with the original and request that the original be returned to you after an immigration officer has compared it with the copies. Copies in duplicate unaccompanied by the original may be accepted if one of the copies bears a certification by an immigration or consular officer or an attorney that the copy was compared with the original and found to be identical.

Any document in a foreign language must be accompanied by a summary translation in English. A summary translation is a condensation or abstract of the document's text. The translator must certify that he/she is competent to translate and that the translation is accurate.

Fee

A fee of fifteen dollars ($15) must be paid for filing this petition. It cannot be refunded regardless of the action taken on the petition. **DO NOT MAIL CASH. ALL FEES MUST BE SUBMITTED IN THE EXACT AMOUNT.** Payment by check or money order must be drawn on a bank or other institution located in the United States and be payable in United States currency. If petitioner resides in Guam, check or money order must be payable to the "Treasurer, Guam." If petitioner resides in the Virgin Islands, check or money order must be payable to the "Commissioner of Finance of the Virgin Islands." All other petitioners must make the check or money order payable to the "Immigration and Naturalization Service." When check is drawn on account of a person other than the petitioner, the name of the petitioner must be entered on the face of the check. If petition is submitted from outside the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States and payable to the "Immigration and Naturalization Service" in United States currency. Personal checks are accepted subject to collectibility. An uncollectible check will render the petition and any document issued pursuant thereto invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Where to file petition

The petition must be filed with the office of the Immigration and Naturalization Service having jurisdiction over the area in which the services will be performed or the training received. Where the services will be performed or the training will be received in more than one area, the petition must be filed in an office of this Service having jurisdiction over at least one of those areas.

More than one H beneficiary may be included in one petition where the beneficiaries will all be performing services in a single operation or receiving the same type of training and, if visas are required, will all be applying for their visas at the same American Consulate and will all be performing the services or receiving the training within the same immigration district. Separate petitions must be filed where the beneficiaries will be performing services in different operations or will not be receiving the same type of training or, if visas are required, will be applying for visas at different American Consulates or will perform the services or receive the training in different immigration districts.

A separate petition must be filed for each L-1 alien.

Physicians and nurses

In the case of an H-1 or H-3 petition for a physician or nurse, there must be attached the following in addition to the documents required in the instructions below for H-1 or H-3 petitions:

1. Evidence that the beneficiary has obtained a full and unrestricted license to practice medicine or nursing in the country where he/she obtained medical or nursing education (Such evidence is not required if evidence is submitted showing that the beneficiary's education was obtained in the United States or that he/she is a physician who passed the examination given by the Educational Council for Foreign Medical Graduates.) and
2. A statement from the petitioner certifying that, to the best of the petitioner's information and belief, (a) the beneficiary is fully qualified under the laws governing the place of intended employment to perform the desired services (or receive the desired training) and (b) that under those laws the petitioner is authorized to employ the beneficiary to substantially perform such services (or to give the beneficiary the desired training). If the law governing the place where the services will be performed places any limitation on the services to be rendered by the beneficiary, the statement must contain details as to the limitation.
3. In the case of an H-1 petition for a nurse, evidence that the beneficiary has a full and unrestricted license to practice professional nursing in the State where services are to be performed or a passing score on the examination administered by the Commission on Graduates of Foreign Nursing Schools.

H-1 Petition for alien(s) of distinguished merit and ability to perform services of an exceptional nature

If petition is for an alien or aliens of distinguished merit and ability, the following supplemental documents must be attached:

Allegations of high education or technical training shall be supported by diplomas, school records, or equivalent documents or affidavits, attesting to such education or technical training and executed by the person in charge of the records of the educational or other institution, firm, or establishment wherein such education or training was acquired, improved, or perfected.

Allegations of specialized experience or exceptional ability shall be supported by affidavits attesting to and describing the degree and extent of the experience or ability, executed by the appropriate officer of the firm, organization, establishment, or other institution wherein the alien(s) acquired or perfected such experience or ability.

Copies of written contracts or summaries of oral contracts between petitioner and beneficiaries must be attached.

H-2 Petition for alien(s) to perform temporary service or labor

If petition is for an alien or aliens to perform temporary services or labor, the following supplemental documents must be attached:

A certification from the Department of Labor indicating that qualified applicants in the United States are not available for referral to the employer and that employment of the alien(s) will not adversely affect wages and working conditions of workers in the United States similarly employed, or a notice from the Department of Labor that such certification cannot be made, and a statement containing a full and complete and detailed description of the situations or conditions which make it necessary to bring the alien or aliens to the United States, whether the necessity is temporary, seasonal, or permanent and, if temporary or seasonal, whether it is expected to recur.

To apply for the certification, the petitioner must place a job order with the local office of the state Employment Service serving the area of proposed employment. In order that the Department of Labor may make a determination as to the availability of qualified applicants in the United States, the order must accurately report the occupational requirements of the job. If local and inter-area recruitment of qualified workers in the United States proves unsuccessful, copies of the certification are furnished to the petitioner through the local Employment Service office where the job order was filed.

If more than one certification is issued by the Department of Labor, a separate petition must be filed for the aliens covered by each certification.

H-3 Petition for alien trainee(s)

If petition is for one or more alien trainees, there must be attached a statement describing the kind of training to be given the alien and setting out the proportion of time that will be devoted to productive employment; the number of hours that will be spent respectively in his classroom instruction, in on-the-job training, and in his/her performance without supervision; the position or duties for which this training will prepare him/her; the reason why such training cannot be obtained in the alien's country; and, if you answered "yes" to item 25A, why it is necessary for alien to take training in the United States.

If this petition is approved, the approval does not signify that the wages shown in item 8 of the petition meet the minimum wage requirements of any state or federal laws. Any questions regarding compliance with those requirements should be addressed to the appropriate state or federal labor authorities.

L-1 Petition for intra-company transferee

If petition is for an L-1 alien, attach a statement describing the capacity in which he/she was employed abroad and the capacity in which he/she is to be employed in the U.S. If the alien's services involve specialized knowledge, describe briefly the nature of the specialized knowledge which makes his/her services here necessary. If the beneficiary is coming to be employed in an establishment being newly opened in the United States by his/her employer, or by the parent company, a subsidiary, or an affiliate of the employer, the statement shall include information concerning the new establishment such as its nature, relationship to the petitioning firm or corporation, its name and address, when it was or will be opened at that address, and where it was incorporated (if it is a corporation), and the total number of employees who will be employed there. Evidence must also be submitted that physical premises for the new establishment have been acquired by purchase, lease, or rental and will be occupied by that establishment.

Extension of stay

This petition form shall be used as an application for a group extension of stay for H aliens who are in the United States pursuant to the approval of a previous petition by the same petitioner. This petition form shall also be used as an application for an extension of stay when filed on behalf of one or more H aliens who are in the United States pursuant to the approval of a petition by another petitioner and are maintaining status. When the petition is being filed as an application for extension of stay the Form I-94(Arrival-Departure Record) of each beneficiary must be attached and, if there is more than one beneficiary, an additional sheet must be attached, noted to show the country of issuance and date of expiration of each beneficiary's passport.

Penalties

Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact or using any false document in the submission of this petition.

SAMPLE FORM I-29

U.S. DEPARTMENT OF LABOR
Employment and Training Administration

OMB Approval No. 44-R1301

APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION

IMPORTANT: READ CAREFULLY BEFORE COMPLETING THIS FORM

PRINT legibly in ink or use a typewriter. If you need more space to answer questions on this form, use a separate sheet. Identify each answer with the number of the corresponding question. SIGN AND DATE each sheet in original signature.

To knowingly furnish any false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by $10,000 fine or 5 years in the penitentiary, or both (18 U.S.C. 1001).

PART A. OFFER OF EMPLOYMENT

1. Name of Alien *(Family name in capital letter, First, Middle, Maiden)*

2. Present Address of Alien *(Number, Street, City and Town, State ZIP Code or Province, Country)*

3. Type of Visa *(If in U.S.)*

The following information is submitted as evidence of an offer of employment.

4. Name of Employer *(Full name of organization)*

5. Telephone *(Area Code and Number)*

6. Address *(Number, Street, City or Town, Country, State, ZIP Code)*

7. Address Where Alien Will Work *(If different from item 6)*

8. Nature of Employer's Business Activity

9. Name of Job Title

10. Total Hours Per Week: a. Basic; b. Overtime

11. Work Schedule *(Hourly)*: a.m. / p.m.

12. Rate of Pay: a. Basic $ per .....; b. Overtime $ per hour

13. Describe Fully the Job to be Performed *(Duties)*

14. State in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in item 13 above.

EDUCATION *(Enter number of years)*	Grade School / High School	College	College Degree Required *(specify)* / Major Field of Study
TRAINING	No. Yrs.	No. Mos.	Type of Training
EXPERIENCE	Job Offered: Number Yrs. / Mos.	Related Occupation: Number Yrs. / Mos.	Related Occupation *(specify)*

15. Other Special Requirements

16. Occupational Title of Person Who Will Be Alien's Immediate Supervisor ►

17. Number of Employees Alien will Supervise ►

◄ ENDORSEMENTS *(Make no entry in section - for government use only)*

Date Forms Received	
L.O.	S.O.
R.O.	N.O.
Ind. Code	Occ. Code
Occ. Title	

SAMPLE FORM ETA 750A

Replaces MA 7-50A, B and C (Apr. 1970 edition) which is obsolete.

ETA 750 (Oct. 1978)

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18. COMPLETE ITEMS ONLY IF JOB IS TEMPORARY			19. IF JOB IS UNIONIZED *(Complete)*	
a. No. of Openings To Be Filled By Aliens Under Job Offer	b. Exact Dates You Expect To Employ Alien		a. Number of Local	b. Name of Local
	From	To		c. City and State

20. STATEMENT FOR LIVE-AT-WORK JOB OFFERS *(Complete for Private Household Job ONLY)*

a. Description of Residence		b. No. Persons Residing at Place of Employment			c. Will free board and private room not shared with anyone be provided? *("X" one)*
("X" one)	Number of Rooms	Adults	Children	Ages	☐ YES ☐ NO
☐ House			BOYS		
☐ Apartment			GIRLS		

21. DESCRIBE EFFORTS TO RECRUIT U.S. WORKERS AND THE RESULTS. *(Specify Sources of Recruitment by Name)*

22. Applications require various types of documentation. Please read PART II of the instructions to assure that appropriate supporting documentation is included with your application.

23. EMPLOYER CERTIFICATIONS

By virtue of my signature below, I HEREBY CERTIFY the following conditions of employment.

a. I have enough funds available to pay the wage or salary offered the alien.

b. The wage offered equals or exceeds the prevailing wage and I guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work.

c. The wage offered is not based on commissions, bonuses, or other incentives, unless I guarantee a wage paid on a weekly, bi-weekly or monthly basis.

d. I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States.

e. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship.

f. The job opportunity is not:

(1) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage.

(2) At issue in a labor dispute involving a work stoppage.

g. The job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law.

h. The job opportunity has been and is clearly open to any qualified U.S. worker.

SAMPLE FORM ETA 750A

24. DECLARATIONS

DECLARATION OF EMPLOYER ➤ *Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.*

SIGNATURE	DATE

NAME *(Type or Print)*	TITLE

AUTHORIZATION OF AGENT OF EMPLOYER ➤ *I HEREBY DESIGNATE the agent below to represent me for the purposes of labor certification and I TAKE FULL RESPONSIBILITY for accuracy of any representations made by my agent.*

SIGNATURE OF EMPLOYER	DATE

NAME OF AGENT *(Type or Print)*	ADDRESS OF AGENT *(Number, Street, City, State, ZIP Code)*

PART B. STATEMENT OF QUALIFICATIONS OF ALIEN

FOR ADVICE CONCERNING REQUIREMENTS FOR ALIEN EMPLOYMENT CERTIFICATION: *If alien is in the U.S., contact nearest office of Immigration and Naturalization Service. If alien is outside U.S., contact nearest U.S. Consulate.*

IMPORTANT: READ ATTACHED INSTRUCTIONS BEFORE COMPLETING THIS FORM.

Print legibly in ink or use a typewriter. If you need more space to fully answer any questions on this form, use a separate sheet. Identify each answer with the number of the corresponding question. Sign and date each sheet.

1. Name of Alien *(Family name in capital letters)* | First name | Middle name | Maiden name

2. Present Address *(No., Street, City or Town, State or Province and ZIP Code* | Country | 3. Type of Visa *(If in U.S.)*

4. Alien's Birthdate *(Month, Day, Year)* | 5. Birthplace *(City or Town, State or Province)* | Country | 6. Present Nationality or Citizenship *(Country)*

7. Address in United States Where Alien Will Reside

8. Name and Address of Prospective Employer if Alien has job offer in U.S. | 9. Occupation in which Alien is Seeking Work

10. "X" the appropriate box below and furnish the information required for the box marked

a. ☐ Alien will apply for a visa abroad at the American Consulate in ⟶ City in Foreign Country | Foreign Country

b. ☐ Alien is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at ⟶ City | State

11. Names and Addresses of Schools, Colleges and Universities Attended *(Include trade or vocational training facilities)*	Field of Study	FROM Month	FROM Year	TO Month	TO Year	Degrees or Certificates Received

SPECIAL QUALIFICATIONS AND SKILLS

12. Additional Qualifications and Skills Alien May Possess and Proficiency in the use of Tools, Machines or Equipment Which Would Help Establish if Alien Meets Requirements for Occupation in Item 9.

13. List Licenses *(Professional, journeyman, etc.)*

14. List Documents Attached Which are Submitted as Evidence that Alien Possesses the Education, Training, Experience, and Abilities Represented

Endorsements

DATE REC. DOL

O.T. & C.

(Make no entry in this section — FOR Government Agency USE ONLY)

(Items continued on next page)

SAMPLE FORM ETA 750B

15. WORK EXPERIENCE. *List all jobs held during past three (3) years. Also, list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9.*

a. NAME AND ADDRESS OF EMPLOYER

NAME OF JOB	DATE STARTED *Month* *Year*	DATE LEFT *Month* *Year*	KIND OF BUSINESS

DESCRIBE IN DETAILS THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT	NO. OF HOURS PER WEEK

b. NAME AND ADDRESS OF EMPLOYER

NAME OF JOB	DATE STARTED *Month* *Year*	DATE LEFT *Month* *Year*	KIND OF BUSINESS

DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT	NO. OF HOURS PER WEEK

c. NAME AND ADDRESS OF EMPLOYER

NAME OF JOB	DATE STARTED *Month* *Year*	DATE LEFT *Month* *Year*	KIND OF BUSINESS

DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT	NO. OF HOURS PER WEEK

SAMPLE FORM ETA 750B

16. DECLARATIONS

DECLARATION OF ALIEN ▶ ▶ *Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.*

SIGNATURE OF ALIEN	DATE

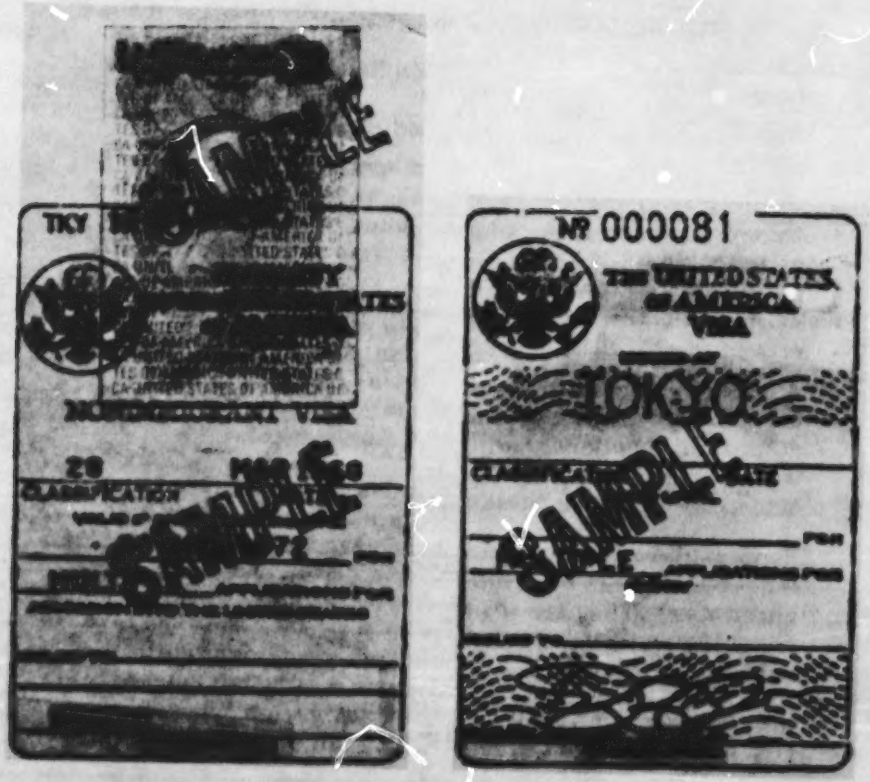
AUTHORIZATION OF AGENT OF ALIEN ▶ ▶ *I hereby designate the agent below to represent me for the purposes of labor certification and I take full responsibility for accuracy of any representations made by my agent.*

SIGNATURE OF ALIEN	DATE

NAME OF AGENT *(Type or print)*	ADDRESS OF AGENT *(No., Street, City, State, ZIP Code)*

APPENDIX 4

VISA STAMP

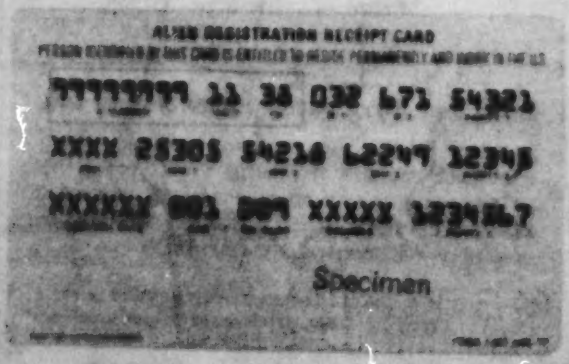


APPENDIX 5

ALIEN REGISTRATION RECEIPT CARD

FORM I-551 (ALIEN REGISTRATION RECEIPT CARD)

Front—Actual Size



Reverse

APPENDIX 6

IMMIGRATION AND NATURALIZATION SERVICE REGIONAL AND DISTRICT AREAS

M-6 (REV. 2-27-81)N

REGIONAL AND DISTRICT OFFICE LOCATIONS

Regional Offices

Eastern Region (BUR)
Burlington, VT 05401
Federal Building
Elmwood Ave.

Northern Region (TWC)
Federal Building
Fort Snelling
Twin Cities, MN 55111

Southern Region (DLS)
Dallas, TX 75270
First International Bldg.
1201 Elm St., Rm. 2300

Western Region (SPO)
San Pedro, CA 90731
Terminal Island

District Offices

32 (ANC)
Anchorage, AK 99513
New Federal Building
701 C Street, Rm. 0329

26 (ATL)
Atlanta, GA 30303
Richard B. Russell
Federal Office Bldg.
75 Spring St. S.W., Rm. 1406

5 (BAL)
Baltimore, MD 21201
E. A. Garmatz Federal Building
100 South Hanover Street

2 (BOS)
Boston, MA 02203
John Fitzgerald Kennedy Federal
Bldg., Government Center

7 (BUF)
Buffalo, NY 14202
68 Court Street

9 (CHI)
Chicago, IL 60604
Dirksen Federal Office Bldg.
219 South Dearborn St.

24 (CLE)
Cleveland, OH 44199
Rm. 1917, Anthony J. Celebrezze
Federal Office Building
1240 East 9th Street

20 (DAL)
Dallas, TX 75242
Room 6A21, Federal Building
1100 Commerce Street

19 (DEN)
Denver, CO 80202
1787 Federal Building
1961 Stout Street

8 (DET)
Detroit, MI 48207
Federal Building
333 Mt. Elliott Street

16 (ELP)
El Paso, TX 79984
343 U.S. Courthouse
P.O. Box 9398

40 (HLG)
Harlingen, TX 78550
2102 Teege Road

23 (HAR)
Hartford, CT 06105
900 Asylum Avenue

30 (HEL)
Helena, MT 59626
Federal Building, Room 512
301 South Park, Drawer 10036

17 (HNN)
Honolulu, HI 96809
P.O. Box 461
595 Ala Moana Boulevard

38 (HOU)
Houston, TX 77208
Federal Building
515 Rusk Ave., P.O. Box 61830

11 (KAN)
Kansas City, MO 64106
Suite 1100
324 E. Eleventh Street

18 (LOS)
Los Angeles, CA 90012
300 North Los Angeles Street

6 (MIA)
Miami, FL 33130
155 South Miami Ave.

21 (NEW)
Newark, NJ 07102
Federal Building
970 Broad Street

28 (NOL)
New Orleans, LA 70113
Postal Service Building
701 Loyola Avenue

3 (NYC)
New York, NY 10007
26 Federal Plaza

29 (OMA)
Omaha, NE 68102
Federal Office Building
106 South 15th Street, Room 1006

4 (PHI)
Philadelphia, PA 19106
Room 1321 U.S. Courthouse
Independence Mall West
601 Market Street

18 (PHO)
Phoenix, AZ 85025
Federal Building
230 North First Avenue

22 (POM)
Portland, ME 04112
76 Pearl Street

31 (POO)
Portland, OR 97209
Federal Office Bldg.
511 N.W. Broadway

1 (STA)
St. Albans, VT 05478
Federal Building
P.O. Box 328

10 (SPM)
St. Paul, MN 55101
932 New Post Office Building
180 East Kellogg Blvd

14 (SNA)
San Antonio, TX 78206
U.S. Federal Building
727 East Durango
Suite A301

39 (SND)
San Diego, CA 92188
880 Front Street

13 (SFR)
San Francisco, CA 94111
Appraisers Building
630 Sansome Street

27 (SAJ)
San Juan, PR 00936
GPO Box 5068
San Juan, P.R.

12 (SEA)
Seattle, WA 98134
815 Airport Way, South

25 (WAS)
Washington, DC 20536
26 E St. N.W.

District Offices in Foreign Countries

33 (HKC)
Hong Kong, B.C.C.
District Director
U.S. Immigration and
Naturalization Service
c/o American Consulate General
Box 30
FPO San Francisco, CA 96659
Street Address (NOT FOR MAIL)
St. John's Bldg., Room 39
Garden Road, Hong Kong, B.C.C.

36 (MEX)
Mexico City, Mexico
District Director
U.S. Immigration and
Naturalization Service
c/o American Embassy
Apartado Postal 88 bis
Mexico 9, D.F., Mexico

37 (RIT)
Rome, Italy
U.S. Immigration and
Naturalization Service
c/o American Embassy
APO New York, N.Y. 09794
Street Address (NOT FOR MAIL)
Via V. Veneto 119

OTHER OFFICES FROM WHICH INFORMATION CONCERNING IMMIGRATION AND NATURALIZATION SERVICE MATTERS MAY BE OBTAINED

17 (AGA)
Agana, GU 96910
U.S. Immigration and
Naturalization Service
801 Pacific News Bldg.
238 O'Hara Street

7 (ALB)
Albany, NY 12207
Rm. 230, U.S. Post Office &
Courthouse
445 Broadway

26 (CLT)
Charlotte, NC 28205
1111 Hawthorne Lane

24 (CIN)
Cincinnati, OH 45301
U.S. Post Office and Courthouse
P.O. Box 537, 5th & Walnut Streets

9 (HMM)
Hammond, IN 46320
104 Federal Bldg., 507 State Street

13 (LVG)
Las Vegas, NV 89101
Federal Bldg., U.S. Courthouse
300 Las Vegas Blvd. South

28 (MEM)
Memphis, TN 38103
814 Federal Office Bldg.
167 North Main Street

9 (MIL)
Milwaukee, WI 53202
Room 186, Federal Building
517 East Wisconsin Avenue

25 (NOR)
Norfolk, VA 23510
Norfolk Federal Building
200 Granby Mall, Room 430

4 (PIT)
Pittsburgh, PA 15222
2130 Federal Building
1000 Liberty Avenue

2 (PRO)
Providence, RI 02903
Federal Building, U.S. Post Office
Exchange Terrace

13 (REN)
Reno, NV 89502
Suite 150
380 South Center St.

11 (STL)
St. Louis, MO 63101
Room 423
U.S. Courthouse and Customhouse
1114 Market Street

19 (SLC)
Salt Lake City, UT 84138
Room 4103 Federal Building
125 South State Street

12 (SPO)
Spokane, WA 99201
691 U.S. Courthouse Building

GPO 979-995

APPENDIX 7

LABOR DEPARTMENT EMPLOYMENT AND TRAINING ADMINISTRATION

ADMINISTRATORS AND ADDRESSES OF REGIONAL OFFICES

Region I	Barbara A. Farmer, Regional Administrator, U.S. DOL/ETA, Room 1701, J. F. Kennedy Building, Boston, Massachusetts 02203. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.)
Region II	James A. Ware, Regional Administrator, U.S. DOL/ETA, Room 3713, 1515 Broadway, New York, New York 10036. (New York, New Jersey, Puerto Rico, and the Virgin Islands.)
Region III	William J. Haltigan, Regional Administrator, U.S. DOL/ETA, P.O. Box 8796, Philadelphia, Pennsylvania 19101. (5000 Wissahickon Avenue, do not use street address for mailing purposes.) (Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.)
Region IV	Lawrence Weatherford. Regional Administrator, U.S. DOL/ETA, Room 415, 1371 Peachtree Street, N.E., Atlanta, Georgia 30309. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.)
Region V	Thomas Komarek, Acting Regional Administrator, U.S. DOL/ETA, 6th Floor, 230 S. Dearborn, Chicago, Illinois 60604. (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.)
Region VI	Louis Garibay, Acting Regional Administrator, U.S. DOL/ETA, Room 316, 555 Griffin Square Building, Dallas, Texas 75202. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.)
Region VII	Richard G. Miskimins, Regional Administrator, U.S. DOL/ETA, Federal Building, Room 1000, 911 Walnut Street, Kansas City, Missouri 64106. (Iowa, Kansas, Missouri, and Nebraska.)
Region VIII	Floyd E. Edwards, Regional Administrator, U.S. DOL/ETA, 1676 Federal Office Building, 1961 Stout Street, Denver, Colorado 80294. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.)
Region IX	Carolyn M. Golding, Regional Administrator, U.S. DOL/ETA, Box 36084, San Francisco, California 94102. (450 Golden Gate Avenue, do not use street address for mailing purposes.) (Arizona, California, Guam, Hawaii, and Nevada.)
Region X	Don A. Balcer, Regional Administrator, U.S. DOL/ETA, Room 1145, Federal Office Building, 909 First Avenue, Seattle, Washington 98174. (Alaska, Idaho, Oregon, and Washington.)

The addresses of the local offices of the several State Employment Services can be obtained at the office of the appropriate Regional Employment and Training Administration.

APPENDIX 8

VISA ISSUING POSTS

ABBREVIATIONS USED:

E	-Embassy	IV	-Immigrant Visas
CG	-Consulate General	NIV	-Nonimmigrant Visas
C	-Consulate	K	-Fiance(e) Category
M	-Mission		

COUNTRY POST	DESIGNATION OF POST	VISAS SERVICES PERFORMED
Afghanistan		
Kabul	E	None
Algeria		
Algiers	E	All
Oran	C	NIV
Andorra		
(See Spain—Barcelona, Madrid)		
Angola		
(See Portugal—Lisbon)		
Anguilla		
(See Barbados)		
Antigua		
(See Barbados)		
Argentina		
Buenos Aires	E	All
Aruba		
(See Netherlands Antilles)		
Australia		
Canberra	E	NIV, diplomatic and official only
Melbourne	CG	NIV
Perth	C	All
Sydney	CG	All
Austria		
Vienna	E	All
Azores Islands		
(See Portugal—Ponta Delgada)		
Bahamas		
Nassau	E	All
Bahrain		
Manama	E	All
Bangladesh		
Dacca	E	All
Barbados		
Bridgetown	E	All
Belgium		
Brussels	E	All
Antwerp	CG	NIV
Belize		
Belize City	CG	All
Benin		
Cotonou	E	All
Bermuda		
Hamilton	CG	All

POST	DESIGNATION	SERVICES
Bhutan		
(See India—New Delhi)		
Bolivia		
La Paz	E	All
Botswana		
Gaborone	E	All
Brazil		
Brasilia	E	NIV
Porto Alegre	C	NIV
Recife	C	NIV
Rio de Janeiro	CG	All
Salvador	C	NIV
Sao Paulo	CG	NIV
Brunei		
(See Malaysia)		
Bulgaria		
Sofia	E	All
Burma		
Rangoon	E	All
Burundi		
Bujumbura	E	All
Cameroon		
Yaounde	E	All
Douala	C	NIV
Canada		
Ottawa	E	NIV
Calgary	CG	All
Halifax	CG	All
Montreal	CG	All
Quebec	CG	All
Toronto	CG	All
Vancouver	CG	All
Winnipeg	CG	All
Canary Islands		
(See Spain—Madrid)		
Cape Verde		
Praia	E	All
Caroline Islands		
(See Mariana Islands)		
Cayman Islands		
(See Jamaica)		

POST	DESIGNATION	SERVICES
Central African Republic		
Bangui	E	All
Chad		
N'Djamena	E	NIV
Chile		
Santiago	E	All
China		
Beijing	E	All
Guangzhou	CG	All
Shanghai	CG	NIV
Colombia		
Bogota	E	All
Barranquilla	C	NIV
Cali	C	NIV
Medellin	C	NIV
Congo, People's Republic of the		
Brazzaville	E	All
Corsica		
(See France—Paris)		
Costa Rica		
San Jose	E	All
Crete		
(See Greece—Athens)		
Cuba		
Havana	USINT	All
Cyprus		
Nicosia	E	All
Czechoslovakia		
Prague	E	All
Denmark		
Copenhagen	E	All
Dhofar		
(See Yemen—Sana)		
Djibouti		
Djibouti	E	All
Dominica		
(See Barbados)		
Dominican Republic		
Santo Domingo	E	All

POST	DESIGNATION	SERVICES
Ecuador		
Quito	E	NIV
Guayaquil	CG	All
Egypt		
Cairo	E	All
Alexandria	CG	NIV
Eire		
(See Ireland)		
El Salvador		
San Salvador	E	All
Eritrea		
(See Ethiopia)		
Equatorial Guinea, Republic of		
(See Cameroon—Yaounde)		
Ethiopia		
Addis Ababa	E	All
Fernando Po		
(See Cameroon)		
Fiji		
Suva	E	All
Finland		
Helsinki	E	All
France		
Paris	E	All
Bordeaux	CG	NIV
Fort-de-France, Martinique, French West Indies	C	All
Lyon	CG	NIV
Marseille	CG	NIV
Strasbourg	CG	NIV
Gabon		
Libreville	E	All
Gambia, The		
Banjul	E	NIV
German Democratic Republic		
Berlin	E	All
Germany, Federal Republic of		
Bonn	E	NIV
Berlin	M(CG)	All
Duesseldorf	CG	NIV
Frankfurt	CG	All
Hamburg	CG	NIV
Munich	CG	NIV
Stuttgart	CG	NIV
Ghana		
Accra	E	All
Gibraltar		
(See Morocco—Tangier)		
Gilbert Islands		
(See Fiji)		
Great Britain and Northern Ireland		
(See United Kingdom)		
Greece		
Athens	E	All
Thessaloniki	CG	All
Grenada		
(See Barbados)		
Guadeloupe		
(See France—Fort-de-France, Martinique)		
Guatemala		
Guatemala City	E	All
Guinea-Bissau		
Bissau	E	All
Guinea		
Conakry	E	All
Guyana		
Georgetown	E	All
Haiti		
Port-au-Prince	E	All
Honduras		
Tegucigalpa	E	All
Hong Kong (B.C.C.) and Taiwan		
Hong Kong	CG	All

Applications from Taiwan may be submitted to the American Institute in Taiwan for administrative processing and referral to Hong Kong for adjudication.

POST	DESIGNATION	SERVICES
Hungary		
Budapest	E	All
Iceland		
Reykjavik	E	All
India		
New Delhi	E	All
Bombay	CG	All
Calcutta	CG	All
Madras	CG	All
Indonesia		
Jakarta	E	All
Medan	C	NIV
Surabaya	C	NIV
Iran	None	
Iraq		
Baghdad	USINT	All
Ireland (Eire)		
Dublin	E	All
Israel		
Tel Aviv	E	All
Italy		
Rome	E	NIV
Florence	C	NIV
Genoa	CG	All
Milan	CG	NIV
Naples	CG	All
Palermo	CG	All
Trieste	C	NIV
Ivory Coast		
Abidjan	E	All
Jamaica		
Kingston	E	All
Japan		
Tokyo	E	All
Fukuoka	C	All
Naha, Okinawa	CG	All
Osaka-Kobe	CG	All
Sapporo	C	All
Jordan		
Amman	E	All
Juan de Nova		
(See Madagascar—Antananarivo)		

POST	DESIGNATION	SERVICES
Kenya		
Nairobi	E	All
Korea		
Seoul	E	All
Kuwait		
Kuwait	E	All
Laos		
Vientiane	E	All
Lebanon		
Beirut	E	All
Lesotho		
Maseru	E	NIV
(See South Africa—Johannesburg)		
Liberia		
Monrovia	E	All
Libya	None	
Liechtenstein		
(See Switzerland—Bern, Zurich)		
Luxembourg		
Luxembourg City	E	NIV
Macao		
(See Hong Kong)		
Madagascar		
Antananarivo	E	All
Madeira Islands		
(See Portugal—Lisbon)		
Malagasy Republic		
(See Madagascar)		
Malawi		
Lilongwe	E	All
Malaysia		
Kuala Lumpur	E	All
Maldives		
(See Sri Lanka)		
Mali		
Bamako	E	All
Malta		
Valletta	E	All

POST	DESIGNATION	SERVICES
Mariana Islands (Trust Territory of the Pacific Islands) High Commissioner, Saipan		
Marshall Islands (See Mariana Islands)		
Martinique (French West Indies) (See France—Fort-de-France, Martinique)		
Mauritania		
Nouakchott	E	All
Mauritius		
Port Louis	E	All
Mexico		
Mexico, D.F.	E	All
Ciudad Juarez	C	All
Guadalajara	CG	All
Hermosillo	CG	NIV
Matamoros	C	NIV
Mazatlan	C	NIV
Merida	C	NIV
Monterrey	CG	All
Nuevo Laredo	C	NIV
Tijuana	CG	All
Monaco (See France—Paris)		
Mongolia (See China—Beijing)		
Montserrat (See Barbados)		
Morocco		
Rabat	E	NIV
Casablanca	CG	All
Tangier	CG	All
Mozambique		
Maputo	E	All
Muscat (See Oman)		
Namibia (See South Africa—Cape Town)		
Nauru (See Australia—Sydney)		

POST	DESIGNATION	SERVICES
Nepal		
Kathmandu	E	All
Netherlands		
The Hague	E	NIV, diplomatic and official only
Amsterdam	CG	NIV except K
Rotterdam	CG	All
Netherlands Antilles		
Curacao	CG	All
New Caledonia (See Fiji)		
New Hebrides (See Fiji)		
New Zealand		
Wellington	E	All
Auckland	CG	All
Nicaragua		
Managua	E	All
Niger		
Niamey	E	All
Nigeria		
Lagos	E	All
Kaduna	C	NIV except K
Norway		
Oslo	E	All
Oman		
Muscat	E	All
Pakistan		
Islamabad	E	All
Karachi	CG	All
Lahore	CG	All
Peshawar	C	NIV
Palau Islands (See Mariana Islands)		
Panama		
Panama City	E	All
Papua New Guinea		
Port Moresby	E	NIV
(See Australia—Sydney)		

POST	DESIGNATION	SERVICES
Paraguay		
Asuncion	E	All
Peru		
Lima	E	All
Philippines		
Manila	E	All
Cebu	C	NIV except K
Poland		
Warsaw	E	All
Krakow	C	NIV except K
Poznan	C	NIV except K
Portugal		
Lisbon	E	All
Oporto	C	All
Ponta Delgada	C	All
Qatar		
Doha	E	All
Romania		
Bucharest	E	All
Rwanda		
Kigali	E	All
St. Christopher—Nevis (See Barbados)		
St. Helena (See South Africa—Cape Town)		
St. Kitts (See Barbados)		
St. Lucia (See Barbados)		
St. Martin (See Netherlands Antilles and Martinique)		
St. Pierre and Miquelon (overseas territory of France) (See Canada—Halifax; and France)		
St. Vincent (See Barbados)		
Samoa, American		
Pago Pago, Tutuila	Office of the Governor	

POST	DESIGNATION	SERVICES
San Marino (See Italy—Genoa, Florence)		
San Tome and Principe (See Gabon—Libreville)		
Sardinia (See Italy—Naples, Rome)		
Saudi Arabia		
Jidda	E	All
Dhahran	CG	All
Senegal		
Dakar	E	All
Seychelles		
Victoria	E	All
Sierra Leone		
Freetown	E	All
Singapore	E	All
Solomon Islands (See Papua New Guinea—Port Moresby; and Australia—Sidney)		
Somalia		
Mogadiscio	E	All
South Africa, Republic of		
Pretoria	E	NIV, diplomatic and official only
Cape Town	CG	All
Durban	CG	All
Johannesburg	CG	All
South West Africa (See South Africa—Cape Town)		
Southern Rhodesia (See Zimbabwe)		
Soviet Union		
Moscow	E	All
Leningrad	CG	NIV
Spain		
Madrid	E	All
Barcelona	CG	NIV
Bilbao	C	NIV
Seville	CG	NIV; IV not subject to numerical limitations

POST	DESIGNATION	SERVICES
Spanish Sahara		
(See Spain—Madrid)		
Sri Lanka		
Colombo	E	All
Sudan		
Khartoum	E	All
Surinam		
Paramaribo	E	All
Swaziland		
Mbabane	E	NIV
(See South Africa—Johannesburg)		
Sweden		
Stockholm	E	All
Switzerland		
Bern	E	All
Geneva	U.S. Mission	G visas and emergency visas
Zurich	CG	NIV
Syria		
Damascus	E	All
Taiwan		
(See Hong Kong)		
Tanzania		
Dar-es-Salaam	E	All
Thailand		
Bangkok	E	All
Togo		
Lome	E	All
Tonga		
(See Fiji)		
Trinidad and Tobago		
Port of Spain	E	All
Trucial States		
(See United Arab Emirates)		
Tunisia		
Tunis	E	All

POST	DESIGNATION	SERVICES
Turkey		
Ankara	E	All
Istanbul	CG	All
Izmir	CG	NIV
Turks and Caicos Islands		
(See The Bahamas—Nassau)		
Tuvalu		
(See Fiji—Suva)		
Uganda		
Kampala	E	All
Union of Soviet Socialist Republics		
(See Soviet Union)		
United Arab Emirates		
Abu Dhabi	E	All
United Kingdom		
London (England)	E	All
Belfast (Northern Ireland)	CG	All
Edinburgh (Scotland)	CG	NIV and some IV's
Upper Volta		
Ouagadougou	E	All
Uruguay		
Montevideo	E	All
Vatican City		
(See Italy—Naples, Rome)		
Venezuela		
Caracas	E	All
Maracaibo	C	NIV
Virgin Islands (British)		
(See Barbados)		
Western Samoa		
(See New Zealand—Wellington)		
West Indies, French		
(See Martinique)		
West Indies, Netherlands		
(See Netherlands Antilles)		
Yemen, Aden		
(See Yemen—Sana)		

POST	DESIGNATION	SERVICES
Yemen, Sana		
Sana	E	All
Yugoslavia		
Belgrade	E	All
Zagreb	CG	All
Zaire		
Kinshasa	E	All
Bukavu	C	NIV
Lumbumbashi	C	NIV
Zambia		
Lusaka	E	All
Zimbabwe		
Salisbury	E	All
(See South Africa—Johannesburg)		

APPENDIX 9

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